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LETTERS

BETWEEN

Lord Hervey and Dr. Middleton.

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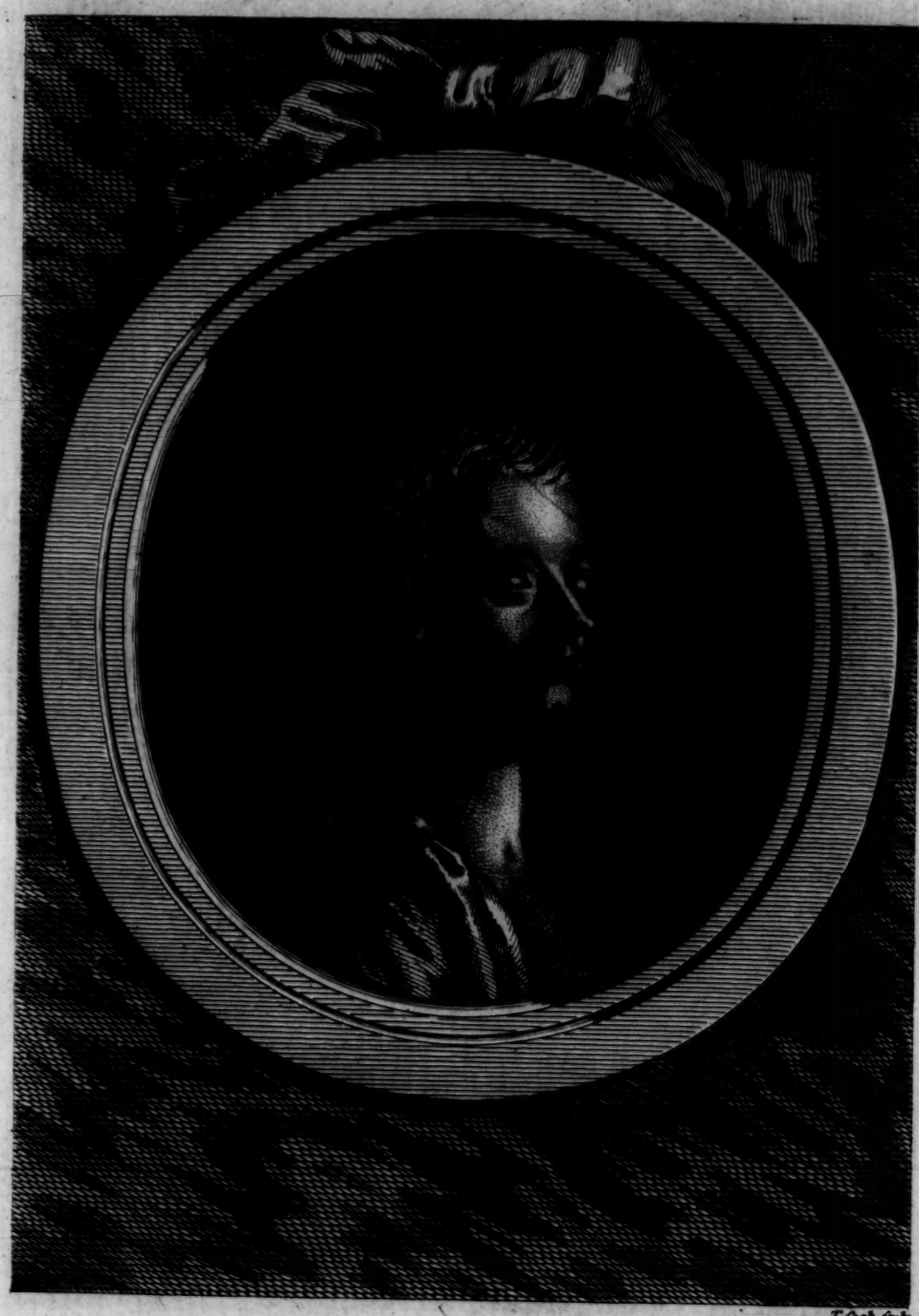

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JOHN LORD HERVEY.

Publish'd as the Act directs April 1st. 1778, by Thos. Cadell in the Strand.

LETTERS

BETWEEN

Lord Hervey and Dr. Middleton

CONCERNING THE

ROMAN SENATE.

PUBLISHED FROM THE ORIGINAL MANUSCRIPTS

By THOMAS KNOWLES, D. D.
RECTOR OF ICKWORTH, IN SUFFOLK.

Eſt enim hæc quoque ſtudioſis non injucunda cognitio.
PLIN. EP. l. iii. Ep. 5.

LONDON:
PRINTED FOR W. STRAHAN; AND T. CADELL, IN THE STRAND.
MDCCLXXVIII.

TO THE

EARL OF BRISTOL,

VICE-ADMIRAL OF THE BLUE IN THE ROYAL NAVY.

MY LORD;

WHEN your Lordſhip was pleaſed to confer upon me the honour of uſhering theſe Letters into the world, you added another, the only one, which could exceed it, That of allowing me to make this public acknowledgment of ſo diſtinguiſhing a favour. To be appointed the Editor of Lord *Hervey*'s Letters is far more flattering, than to be reputed the Author of

of moſt others. The whole Kingdom was ſenſible of his ſuperior talents, whether exerted in the Cabinet, in the Senate, in the political world, or in the republic of letters. No one was better qualified to ſupport a ſhining character in Government, and an equally bright one in Literature.

Your Lordſhip has, from your youth, been deſtined to a different courſe of action; wherein you have acquitted yourſelf with no leſs credit to your character, than advantage to the public.

But I am reſtrained by your Lordſhip's ſpecial injunction from expatiating upon this topic: and indeed I comply the leſs unwillingly with ſuch a command, as our *Britiſh* records, nay, our enemies will proclaim it, though I am ſilent.---Your liberal principles and extenſive benevolence are

virtues,

virtues, that will ſpeak for themſelves: but your warmth of friendſhip I cannot ſuppreſs, when I am receiving ſuch a mark of your confidence, as the ſuperintendence of the preſent publication.

I eſteem this honour, as an acknowledgment of your Lordſhip's ſenſe of my invariable attachment, during a long ſeries of years, to yourſelf and family.

I am, MY LORD,

With all due regard,

Your Lordſhip's moſt faithful,

and obliged humble ſervant,

Bury St. Edmund's. THOMAS KNOWLES.

PREFACE

BY THE

EDITOR.

SOME years have paſſed ſince Dr. *Middleton* publiſhed his Treatiſe on the *Roman* Senate, which, as he informs us, was the ſubſtance of ſeveral Letters, written to the late Lord *Hervey* upon that ſubject, and purpoſely written with a view to the publication of them. For in the fifth Letter he propoſes the printing of his own thoughts with Lord *Hervey*'s, as an inducement to his noble friend to conſent to the joint appearance of both. Dr. *Middleton* underſtood full well, that his own muſt appear imperfect without the others; and the learned world in general were very deſirous of ſeeing the whole correſpondence, which, it was known, had been carried on between them.

Accordingly, before he publiſhed his book, I remember, that he applied to the then Earl of *Briſtol*, his Lordſhip's father, for leave to print Lord *Hervey*'s Letters with his own: but he could not ſucceed in that application, though urged with earneſtneſs, and not without good reaſon. The wiſh however, which he has repeatedly expreſſed, is now accompliſhed by the compliance of the preſent Earl; who is willing to gratify the deſires of the learned world; and has committed the publication of them to my care. A truſt, which I hope will be found to be faithfully executed; and nothing but faithfulneſs was required: for it plainly appears from the original manuſcripts, that the author had prepared theſe Letters for the preſs, however averſe he might be to the propoſal of printing them in his life-time. (See Letter VI.) They have been often tranſcribed, reviſed, and corrected, till every part had received the finiſhing ſtroke from his own pen. He never ſcrupled to riſk the impertinencies of the political critic, though he cautiouſly ſhunned the ſeverity of the claſſical: and yet, it was difficult to ſay, which of the two was his *fort*: for ſo eminently did he excel in whatever he undertook, that his readers would naturally ſuppoſe *that* to be

his chief accompliſhment, which was the preſent ſubject of it. Thus juſtly has that been applied to him, which *Livy* has ſaid of *Cato* (l. xxxix. 40.), *Huic verſatile ingenium ſic pariter ad omnia fuit, ut natum ad id unum diceres, quodcunque ageret.*

Dr. *Middleton* tells him in his Dedication of the the Life of *Cicero*, " I have ſeen the ſolid effects of " your reading in your judicious reflections on the " policy of thoſe ancient Governments; and have felt " your weight even in controverſy, on ſome of the " moſt delicate parts of their Hiſtory:" in alluſion, moſt probably, to this very correſpondence upon the *Roman* Senate; in which the Doctor almoſt grants, that he has been confuted, though he will not quite confeſs, that he is convinced. See Letter XIV.

This Queſtion is of ſo intereſting and curious a nature, that the late Earl *Stanhope* propoſed it to the celebrated *Vertot*, for his diſquiſition; and he had, after ſome pains, given an anſwer to it. He had ſaid enough perhaps to ſatisfy the generality of enquirers, who are apt to reſt their own judgment upon the ſentiments of one, who had made ſuch ſubjects the buſineſs of his life: but neither *Vertot* nor *Middleton*, however eminent were their names, could influence ſuch an adept as Lord *Hervey* to depart from an opi-

nion, which, though it differed from theirs, yet was ſupported by ſuch authorities from the ancient records, as neither of them ſeemed to have ſo much *in promptu*, as himſelf.

Dr. *Middleton* has ſaid, " that the ſubject has not " been profeſſedly treated by any of the ancients, nor " ſufficiently explained by any of the moderns." The whole therefore, thus exhibited in full view, cannot fail of adding to " that uſe and entertainment," which he flatters himſelf his own part alone will give to the curious inquirer; " as," to uſe his own words, " it exhibits a more diſtinct idea, than will " be found elſewhere, of the genius of the *Roman* " government in general, as well as a more preciſe " illuſtration of the conſtitution of the *Roman* Senate" in particular.

Two authors are found in *Grævius*'s *Theſaurus*, tom. i. who have profeſſedly wrote, each a ſhort treatiſe, on the *Roman* Senate; *P. Manutius*, and *Joannes Sarius Zamoſcius*. The former both parties have quoted, with great advantage to themſelves: the latter is quoted only by Dr. *Middleton*, who ſuppoſes *Sigonius* to be the real author of that book: (See Letter XII. Note *u*.) but *Grævius* gives his reaſons why he cannot admit of ſuch a ſuppoſition. See his Preface to vol. i.—Theſe writers too acknowledge the difficul-

ties, that attend an inquiry into this matter: *Zamoſcius* more particularly, *rem quidem fateor perobſcuram & arduam imprimis*, c. i. But the importance of it in order to explain the *Roman* antiquities; and the neceſſity of it in order to underſtand the *Latin* writers, he urges and maintains.

In c. iii. he inſiſts upon the choice of Senators being at firſt in the Kings.—In c. viii. he treats of the Senatorial age. This he thinks is not preciſely fixed by the ancient authors; but that it was moſt certainly decreed, that none ſhould enter into the Senate, before he was twenty-five years old: and ſays, he agrees with *Sigonius*, whom he calls a diligent ſearcher into antiquity (which he would ſcarcely have ſaid of himſelf under a fictitious name), that the Senatorial age followed that of the Quæſtorſhip. This office, he obſerves, none could exerciſe before he was twenty-ſeven, few ſo ſoon: and if they did, it ſeldom happened, that he was choſen into the Senate the year following: probably, not till thirty, as Dr. *Middleton* imagines: See Letter XII.—In c. xviii. he ſettles the number of Senators at the ſeveral periods of the State; in which he agrees with Lord *Hervey* in his authorities: but has not entered ſo deeply into the merits of the debate; nor ſo preciſely determined

determined the particulars of it: for he has rather paſſed over theſe things curſorily. Thus much falls within the compaſs of the preſent controverſy.

What opinion *Manutius* held, as to this queſtion, is evident from the quotations, that are made from his Treatiſe, which every where coincide with Lord *Hervey*'s hypotheſis: though, upon the whole, it more generally relates to the buſineſs and authority of the Senate, than to the choice or qualifications of the Senators.

The ſecond Letter in this collection is that, which Dr. *Middleton* wrote in anſwer to Lord *Hervey*'s requeſt in the firſt, and has printed at the beginning of his Treatiſe: but as he confeſſes he was not then ſufficiently prepared for a full anſwer to the inquiry, "he ſat down to conſider the argument again more "preciſely," after he had received his Lordſhip's opinion at large, in the third and fourth Letters: and the reſult of his ſearches was that Treatiſe, which he afterwards publiſhed in the form of one continued Letter, but was indeed the ſubſtance of five, *viz.* the VIII.—XII. Theſe Lord *Hervey* ſays in his manuſcript were ſent to him at different times, within the ſpace of ſix weeks. He has there preſerved them diſtinct; and as they now appear in the midſt of the

other

other Letters, which paſſed upon the ſame ſubject, it was judged proper to re-publiſh them in their original form: eſpecially, as Dr. *Middleton* wiſhed to have collected them "in the very words of the originals, "as far as they could be recovered from the imper-"fect notes, which he had taken of them, or at leaſt, "in an exact conformity to that ſenſe, in which "they were firſt written." But as, notwithſtanding his care, ſome things are omitted, and others altered in many places, I have endeavoured to ſupply the deficiency, which he ſeems to wiſh his own memory or notes could have ſupplied: and by the help of the printed copy and manuſcript compared together, have taken in the whole that ever paſſed between the two correſpondents upon this topic. Where there is any material difference, I have pointed it out in the margin: otherwiſe, I have choſen the ſentence from the one or the other, as it appeared moſt expreſſive of his meaning, or ſeemed to give the greateſt force to his argument: for whoever will take the ſame pains to examine both, will diſcover, that this is ſometimes placed in a ſtronger light, as it ſtands in the original, than in the laſt reviſal of it, which he publiſhed.

If it ſhould be ſaid, that by thus chuſing what appeared to me the beſt from each, I have made myſelf the judge of Dr. *Middleton*'s own corrections; it is true, that I have: but as far as I was able to judge, which ſtill I ſubmit to the judgment of others, I have endeavoured, as much as I could, that it ſhould never be to his diſadvantage: and I could not but think, that I might be juſtified in this, when he himſelf profeſſes, that he was deſirous of publiſhing his Treatiſe in the very words of the original, if he could have recollected them: ſo that this can be doing him no injuſtice; for it is only taking his own words ſtill: but from the one or the other I have never deviated a tittle.

The whole controverſy, which has long been wiſhed for, but could never be obtained, is now laid complete before the world. I may ſay, there is ſcarcely a doubt to be conceived of what they will judge of it. It is pleaſant to ſee two ſuch able combatants in the field, each of them aſſailing the other with his own weapons. One of the antagoniſts indeed muſt gain the preference; but neither of them can be diſgraced by loſing the victory.

Bury St. Edmunds.

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LETTER I.

Lord Hervey to Dr. Middleton.

LETTER I.

Lord Hervey to Dr. Middleton.

DEAR SIR,

I SHOULD be very ſorry, after all the pains you have taken with what I had the pleaſure of reading, that you ſhould deny yourſelf the credit, and the world the benefit, of making it public; eſpecially ſince you have taken care to guard it from any attacks your enemies might be glad to make upon it, on the ſide of heterodoxy; and that I know, whatever you write is invulnerable to any other weapon of criticiſm. I therefore hope you will forward this paper immediately to the preſs.

Your deſign of writing the Life of *Cicero*, I am charmed with: I know nobody, without any flattery, ſo

capable as yourſelf, of compiling ſo noble, ſo edifying, and ſo entertaining a work, as this Hiſtory, well related, would be to all the learned world: and as I think the actions of this extraordinary man ought to be told in the beſt manner, ſo who can ever ſo properly undertake the telling them, as one, who (in my weak judgment at leaſt) will do it in a ſtyle neither unlike nor unequal to his own?

In this work I would have you confine yourſelf to the times, though not to the Life of *Cicero*: but as *Polybius* has done in his Hiſtory of the *Punick* wars, take in every thing that was tranſacting at that period, throughout the known world. I wiſh you had his *Scipio* or his *Lælius* to aſſiſt you: but take care you do not, like him, incur any imputation of too FREE THINKING, from thoſe, who can bear information as little on religious ſubjects, as they are capable of giving it on any other; and are as impatient of the knowledge of other people, as other people are of their ignorance.

Pope *Nicholas* the Fifth, however, notwithſtanding the freedom of this author, loved polite Learning, ſo much more than he hated Hereſy, that he could not help giving him his due as an Author; and publiſhed his works with that grateful applauſe, which he thought the pleaſure he had in reading them required, in juſ-

tice,

tice, at his hands. If you made the ſame ſlips as *Polybius*, though I dare ſay you would have as many beauties to compenſate for them, I do not fancy our *Pope* would have the ſame indulgence.

I wiſh, if you know any good reaſon why the twelve firſt *Cæſars* are always called *the* twelve *Cæſars*, you would tell it me: it is a Queſtion (a very idle and inſignificant one you will ſay) which I have put to many of the Learned, without ever receiving a ſatisfactory anſwer.

I ſhould be glad too, you would ſend me word, what notion you have of the *Quinquereme* of the *Romans* and *Carthaginians*. Dr. *Arbuthnot*'s account of this veſſel, in his Book upon ancient Coins, Weights, and Meaſures, rather makes one laugh at the abſurdity of ſuch a conjecturer, than gives the leaſt footing to any probable conjecture about it.

There is another Queſtion, which has puzzled thoſe who are the beſt ſkilled in ancient hiſtory and cuſtoms; and that is, the manner of filling up the Senate of *Rome*. *Vertot*'s Letter to Earl *Stanhope* on this ſubject (which to be ſure you have ſeen) rather juſtifies doubts, than removes them: a caſe which muſt always happen, when, without receiving a ſolution, one ſtates doubts to thoſe, who would be beſt able to remove them, if they were removable.

 Adieu.

LETTER II.

Dr. Middleton to Lord Hervey,

ON THE

Right and Manner of creating Senators in Old ROME.

OLD ROME.

Knight and Master of Creating Sculptors in

ON THE

Dr. Middleton to Lord Hervey.

LETTER II.

LETTER II.

Dr. Middleton to Lord Hervey.

MY LORD, *April* 1, 1735.

I WISH that it were in my power to give your Lordſhip any ſatisfaction, on this or any other occaſion, where you can poſſibly want it; which as I endeavoured in my laſt letter, upon a queſtion of a different kind, ſo I ſhall attempt again in this, on the ſubject of the *Roman* Senate, where I fancy myſelf perhaps more capable, as well as the argument more worthy of your Lordſhip's inquiry.—I am aſhamed to confeſs, that when I received the honour of your Lordſhip's, I had not read M. *Vertot*'s anſwer to Earl *Stanhope*: but I have ſince procured it, in order to ſee

 diſtinctly,

distinctly, what it was that could remain still obscure to you, in a question which had been treated by so able a master, and which of itself had appeared always to me to be sufficiently clear. I shall not trouble your Lordship with my particular exceptions to the account of that learned Antiquary, but give you only in short, my own sentiments on the same subject, drawn, as I imagine, from evident and authentic testimonies of the ancient writers.

From the time that the Plebeians had opened themselves a way to the first honours of the state, the constant and regular supply of the Senate was from the annual magistrates, who, by virtue of their several offices, acquired an immediate right to sit and vote in that assembly. The usual gradation of these offices was that of *Quæstor*, *Tribune of the people*, *Ædile*, *Prætor*, and *Consul*; which every candidate, in the ordinary forms of the constitution, was obliged to take in their order, with this exception only, that he might forego either the Tribunate or the Ædileship at his own choice, without a necessity of passing through them both. The Quæstorship was called the first step of honour; and the Quæstors, who were generally employed in the provinces abroad, assigned to them severally by lot, no sooner returned from their provincial admi-

adminiſtration, than they took their places in the Senate, and from that time forward, from the rank of Equeſtrians, or what we commonly call Knights, became Senators for life.

All theſe magiſtrates were elected by the people in their public aſſemblies, promiſcuouſly and indifferently from the whole body of the citizens; which explains what *Cicero* frequently declares in different parts of his works, "That the ſenatorian dignity was conferred by "the ſuffrage and judgment of the whole *Roman* "people; and that an acceſs to the ſupreme council of "the republic was laid open to the virtue and induſtry "of every private citizen [a]."

But though theſe offices gave both an immediate right and actual entrance into the ſenate, yet the ſenatorian character was not eſteemed complete, till the

[a] Qui cum regum poteſtatem non tuliſſent, ita magiſtratus annuos creaverunt, ut concilium Senatus reip. proponerent ſempiternum; deligerentur autem in id conſilium ab univerſo populo, adituſque in illum ſummum ordinem omnium civium induſtriæ ac virtuti pateret. *Cic. pro Sext.* 65.

Si populum *Romanum*, cujus honoribus in ampliſſimo conſilio collocati ſumus. *Poſt red. in Sen.* 1.

In eo loco, in quo me honores populi *Romani* collocaverunt. *Pr. Dom.* 31.

Cujus beneficio in hunc ordinem venimus. *In Verr.* iv. 11.

new Senators had been enrolled by the Cenſors, at the next *Luſtrum*, or general review of all the orders of the city, which was generally held every five years. Yet this enrolment was but a matter of form, which could not be denied to any of them, except for ſome legal incapacity, or the notoriety of ſome crime, or infamy upon their characters; for which the ſame Cenſors could expel or deprive any other Senator, of what rank or ſtanding ſoever. It was one part likewiſe of the cenſorian juriſdiction, to fill up the vacancies of the Senate, upon any remarkable deficiency in their number, with new members from the equeſtrian order, who had not yet born any magiſtracy: but this was not done arbitrarily, or without the conſent and approbation of the people. For by obſerving the manner of proceeding on ſome extraordinary occaſions, we may collect the legal and regular method in ordinary caſes. For example, after the battle of *Cannæ*, the Senate being greatly exhauſted, and no cenſors in office, a Dictator was created for the ſingle purpoſe of filling up the vacancies: who preſently aſcended the Roſtra, and in the preſence of the people, aſſembled in the Forum, ordered all thoſe, who remained alive of the laſt cenſorian liſt, to be firſt called, and enrolled anew; then thoſe, who, ſince that time, had borne a curule magiſtracy,

giſtracy, but had not been enrolled, each according to the order of his creation; then thoſe, who had been *Ædiles*, *Tribunes of the people*, or *Quæſtors*; and laſtly, thoſe of the equeſtrian rank, who had borne no magiſtracy at all, but had ſignalized themſelves in the war, and taken ſpoils from the enemy: and having thus added one hundred and ſeventy-ſeven new ſenators to the laſt roll, with the univerſal approbation of the people, he laid down his office [b]. Upon another occaſion likewiſe, when *Sylla*, the dictator, after the deſtruction made by his civil wars and proſcriptions, found it neceſſary to fill up the exhauſted Senate with three hundred Knights, he gave the choice of them to the people in an aſſembly of their tribes [c].

The power of the cenſors, being naturally odious and unpopular, was generally exerciſed with temper and caution, unleſs when an extraordinary licence and corruption of the times ſeemed to demand a particular ſeverity and enforcement of diſcipline. The cenſures however of theſe magiſtrates were not perpetual or irreverſible, nor conſidered as bars to any future advancement: for what was inflicted by one Cenſor, was ſometimes reverſed by the other; and what

[b] Liv. l. xxiii. 23.
[c] App. de Bell. civ. l. i. p. 413.

was

was done by them both, by an appeal to the people; or by the ſucceeding Cenſors; who commonly reſtored the diſgraced party to his former dignity; or elſe by obtaining, a ſecond time, any of the magiſtracies above-mentioned, the perſon ſo diſgraced entered again into the Senate, and was enrolled of courſe by the next Cenſors. Thus we find ſome, who had ſuffered the cenſorian note of infamy, choſen Cenſors afterwards themſelves [d]; and *C. Antonius*, who was *Cicero*'s colleague in the conſulſhip, had been expelled the Senate for his vices, about ſix years before; and *Lentulus* alſo, who was expelled even after he had been conſul, was reſtored to the Senate by obtaining the prætorſhip a ſecond time after that diſgrace; in which office he was put to death by *Cicero*, for conſpiring with *Cataline* againſt the public liberty [e].

Thus,

[d] Ponam illud unum: *C. Getam*, cum a *L. Metello* & *Cn. Domitio* cenſoribus e ſenatu ejectus eſſet, cenſorem ipſum poſtea eſſe factum.—Quos autem *L. Gellius* & *Cn. Lentulus*, duo cenſores, furti & captarum pecuniarum notaverunt, ii non modo in ſenatum redierunt, ſed etiam illarum ipſarum rerum judiciis abſoluti ſunt. *Cic. pro Cluent.* 42.

Cenſores denique ipſi ſæpenumero ſuperiorum cenſorum judiciis—non ſteterunt; atque etiam ipſi inter ſe cenſores ſua judicia tanti eſſe arbitrantur, ut alter alterius judicium non modo reprehendat, ſed etiam reſcindat: ut alter de ſenatu movere velit, alter retineat. *Ibid.* 43. Vide etiam *Val. Max.* l. ii. 9. 9.

[e] Hunc *Antonium* ſexennio, quo hæc dicerentur, *Gellius* & *Lentulus* cenſores ſenatu moverunt; cauſamque ſubſcripſerunt, quod judicium recuſarit,

Thus, as it is evident from unqueſtionable authorities, the legal and ordinary ſource, by which the vacancies of the Senate were ſupplied, was from the annual magiſtrates, choſen by the people: a method of ſupply, of all others the beſt adapted to ſupport the dignity, as well as to fill up the number of that auguſt body, which could never be remarkably deficient, but by the uncommon accidents of war, or peſtilence, or proſcriptions of the nobility: on which occaſions thoſe deficiencies were ſupplied, either by the extraordinary power of a Dictator, created for that purpoſe, or the ordinary power of the Cenſors, confirmed by the approbation of the people. M. *Vertot* ſeems to perplex the queſtion; firſt, by conſidering the authority of the people, and that of the Cenſors, as oppoſite and inconſiſtent with each other in the creation of Senators; whereas they were both of them jointly neceſſary, to make the act complete: ſecondly, by aſſerting the cenſorian power to be the original and principal in that affair; whereas it was but ſecondary or miniſterial to the ſovereign prerogative of the people.

If this repreſentation of the matter ſhould yield any ſatisfaction to your Lordſhip, by throwing the queſtion

recuſarit, quod propter æris alieni magnitudinem prædia manciparit, bonaque ſua in poteſtate non haberet. *Aſc. Pæd. in Orat. in Tog. Cand.* Vid. et. *Dio, l.* xxxvii. p. 43. *D. Vell. Pat.* ii. 34.

into a clearer light than it had enjoyed before, I ſhall have a ſingular pleaſure for having contributed ſomewhat, how ſmall ſoever, to the entertainment of your curioſity, having no greater ambition than to approve myſelf, on all occaſions, with the greateſt attachment,

My Lord,

Your Lordſhip's moſt devoted Servant.

LETTER

LETTER III.

Lord Hervey to Dr. Middleton,

ON THE

Difficulties that ariſe in accounting for the different Manner of ſupplying the Vacancies in the ROMAN Senate at different Periods; and on the Number of which at thoſe different Periods it conſiſted.

LETTER III.

Lord Hervey to Dr. Middleton.

SIR,

IN your Letter relating to the filling up the *Roman Senate*, you begin with an account only of what was done "after the Plebeians had opened themſelves "a way to the principal dignities of the State." Therefore, before I make any anſwer to what is contained in that Letter, I muſt acquaint you how difficult I find it, on comparing different authors, to come at any certainty, not only about the manner of filling up the Senate from the beginning of the Conſular ſtate till the time of the Emperors, but even in

the manner of its inſtitution and augmentation before that Æra, which you have choſen for the commencement of your account.

That the Senate was founded by *Romulus*, there is no reaſon to doubt; but whether by the free election of the people, or the arbitrary nomination of the Prince, is a queſtion yet undecided; as well as the time, when it was firſt inſtituted; that is, whether prior, or ſubſequent to the peace with the *Sabines*, and the aſſociated reign of *Romulus* and *Tatius* the *Sabin*.

The firſt account *Livy* gives of the inſtitution of the Senate is[a], "that *Romulus*, finding the power and "ſtrength of his new city increaſe, thought of form-"ing a council to direct that ſtrength, and accord-"ingly eſtabliſhed a hundred Senators."

But *Livy* here gives no particular account in what manner they were eſtabliſhed; and leaves it undecided whether *Romulus* nominated theſe hundred Senators himſelf, as our King creates Peers, or whether he ordered them to be elected, as our King does members of the Houſe of Commons, when he calls a Parliament.

[a] Quum jam virium haud pœniteret, conſilium deinde viribus parat: centum creat Senatores: ſive quia is numerus ſatis erat: ſive quia ſoli centum erant qui creari patres poſſent. *Liv.* l. i. c. 8.

Dionyſius

Dionyſius[b] of *Halicarnaſſus*, b. ii. c. 12. deſcribes very particularly and minutely the manner, in which *Romulus* cauſed theſe firſt hundred Senators to be elected: one only, he ſays, was nominated by *Romulus*, which one was to be the firſt Senator, and preſide in the Senate in the abſence of the King; whilſt for the other ninety-nine, the three Tribes were each of them to chuſe three, and each of the ten *Curiæ*, who compoſed each of theſe Tribes, were to chuſe three more; and (as Monſ. *Vertot* ſays) the ſame author, in another place, b. ii. c. 47. confirms this opinion of the Senators being elective, by relating that "when *Romulus* "and *Tatius* the *Sabin* augmented the Senate by in-"troducing a hundred new Sabin-Senators, the elec-"tion of thoſe Senators was made by the Tribes, and "the *Curiæ*."[c]

[b] Romulus Senatores ita elegit, ipſe ex omnibus unum declaravit, quem maxime idoneum judicavit, cui rerum urbanarum adminiſtrationem committeret, quoties ipſe copias extra agri Romani fines duceret. Tribuum unamquamque juſſit tres viros ſibi eligere, qui per ætatem maxime ſaperent, quique ob nobilitatem eſſent illuſtres: poſt hos novem imperavit ut unaquæque curia tres Patricios maxime idoneos eligeret: deinde quum ad primos illos novem, qui a Tribubus electi fuerant, addidiſſet 90, quos curiæ ſuis ſuffragiis legerant, hiſque ducem præfeciſſet, quem ipſe ante elegerat, centum Senatorum numerum explevit. *Dionyſ.* l. ii. c. 12.

[c] Ex quibus centum viros, curiarum ſuffragiis creatos, ad veterem Senatorum numerum addiderunt. *Dionyſ.* l. ii. c. 47.

But the manner of making the augmentation of theſe hundred new Senators reported by *Dionyſius*, will be of little authority, if the augmentation itſelf is not credited: and that there is nothing in *Livy*, that juſtifies, and many things that abſolutely contradict, the account of this augmentation, is certain. All the conceſſions (according to *Livy*) made by *Romulus* to *Tatius* and the *Sabins*, on his concluding a peace with them, were, "that the two Kingdoms ſhould be united, "and the two Kings reign jointly, and that the Ro-"man people ſhould from *Curæs*, the name of a "*Sabin* town, be called Quirites [d]." At the ſame time too, when the centuries of Knights were formed, *Romulus*, in honour of *Tatius*, called one of theſe centuries *Tatienſes*: theſe conceſſions are likewiſe recorded by *Dionyſius* [e].

When *Aurelius Victor*, in the life of *Romulus*, relates theſe conceſſions made to the *Sabins*, he adds a third

[d] Civitatem unam ex duabus faciunt, regnum conſociant. — Ita geminatâ urbe ut Sabinis tamen aliquid daretur, Quirites à Curibus appellati. Eodem tempore & Centuriæ tres Equitum conſcriptæ ſunt; Ramnenſes ab Romulo, ab Tito Tatio Tatienſes appellati, &c. *Liv.* l. i. c. 13.

[e] Ut Romulus & Tatius eſſent Romanorum reges pari poteſtate & pari honore fruentes: unuſquiſque civis Romanus ut ante appellaretur, ſed univerſi a Tatii patriâ, communi appellatione comprehenſi, Quirites vocarentur. *Dionyſ.* l. ii. c. 47.

article to the two mentioned by *Livy*, which is, that *Romulus* called the hundred Senators *Fathers* from their paternal piety[f]: and this looks either as if there had been an addition of a hundred Senators then made to the Senate, or that the firſt inſtitution of the Senate by *Romulus* was to be placed at that period.

Florus, more directly than *Aur. Victor*, ſeems to place the firſt inſtitution of the Senate after the peace with the *Sabins:* for before that time the Senate is never mentioned; and ſpeaking of the tranſactions and ordinances of *Romulus* after that peace was made, and the treaty of alliance and friendſhip concluded, *Florus* ſays, "This wiſe King, among many other prudent regulations, put the old men at the head of the council of the commonwealth, which old men were from their authority called Fathers, and from their age Senators[g]:" and then this Hiſtorian adds, "that not long after theſe regulations *Romulus* died."

From

[f] Romulus fœdus percuſſit, & Sabinos in urbem recepit, populum a Curibus oppido Sabinorum, Quirites vocavit. Centum Senatores a pietate Patres appellavit: tres Equitum centurias inſtituit, quas a ſuo nomine Romanenſes, a Tito Tatio Tatienſes; a Lucomone Lucres appellavit. *Aur. Victor, in Vitâ Romuli.*

[g] Sic pax facta cum Tatio fœduſque percuſſum, &c. hunc, rex ſapientiſſimus, ſtatum reipublicæ impoſuit. Juventus diviſa per tribus, in equis & armis, ad ſubita belli excubarit: conſilium reipublicæ

From the authors I have quoted, you ſee there is ſome room to doubt, whether the Senate was firſt inſtituted before or after the peace with the *Sabins*; but what I think moſt extraordinary is, that *Livy* and *Dionyſius* (who muſt have written much about the ſame time, as they were cotemporaries in the Auguſtan age [h]) ſhould write ſo differently on two ſuch remarkable circumſtances, as the Senators being elected, and the addition of a hundred *Sabin* Senators to the hundred *Romans*.

Livy does not merely paſs this augmentation over in ſilence, but in two places he directly contradicts it:

reipublicæ penes ſenes eſſet, qui ex auctoritate Patres, ab ætate Senatus vocabatur: his ita ordinatis, &c. *Florus*, l. i. c. 1.

Hi vel ætate vel curæ ſimilitudine Patres appellabantur. *Salluſt. in Cat. conj.*

Senatores a ſenectute dici ſatis conſtat, itaque etiam Patres appellati ſunt. *Feſtus.*

Quos Senatores nominavit propter ſenectutem. *Eutrop.* l. i. c. 2.

Niſi conſilium & ratio eſſent in ſenibus, non ſummum conſilium majores noſtri appellaſſent Senatum. *Cic. de Senectute.*

Nomen & ætatis mite Senatus habet. *Ovid. Faſt.* v.

[h] Scripſit Livius poſt Auguſti triumphum de bello Actiaco. *Voſſius*, l. 1. *de Hiſtoricis Latinis.*

Dionyſius Romam navigavit quo tempore Auguſtus, nuper devicto & ſublato Antonio, ſolus rebus Romanis præerat. *Galenius in Litt. ad Joan. Rodolphum.*

Auguſti temporibus floruit Dionyſius, quod ſatis indicat Strabo ejuſdem temporis ſcriptor. *Voſſius de Hiſt. Græcis*, l. ii. c. 3.

for

for in ſpeaking of the Senate immediately after the death of *Romulus*, he calls them "the hundred Fathers[i]:" and a little farther, in deſcribing the diſſatisfaction of the people during this *Interregnum*, between the death of *Romulus* and the acceſſion of *Numa*, he ſays, "the people looked upon the Government "at that time to be a ſort of multiplied ſlavery, as "they had exchanged one maſter for a hundred[k]."

And yet the editor of *Aurelius Victor in uſum Delphini*, gives into the opinion of ſome augmentation being made of a hundred Senators, after the inſtitution of the firſt hundred, and before the addition made by *Tarquinius Priſcus:* for in his note (marked 7) on that addition by *Tarquin*, he ſays, "by this means the "Senate conſiſted of three hundred[l]." Whether this ſuppoſes a hundred to have been added by *Romulus* after the peace with the *Sabins*, according to *Dionyſius* and *Plutarch*[m], or after the deſtruction of *Alba* by *Tul-*

[i] Itaque rem inter ſe centum Patres, decem decuriis factis, ſinguliſque in ſingulas decurias creatis, qui ſummæ rerum præeſſent, conſociant. *Liv.* l. i. c. 17.

[k] Annumque intervallum regni fuit: id ab re, quod nunc quoque tenet nomen, Interregnum appellatum. Fremere deinde plebs; multiplicatam ſervitutem, centum pro uno domino factos. *Liv.* l. i. c. 17.

[l] Sic trecentos Senatores Roma habuit. *Not.* 7. *Aurel. Vict. in vitâ Tarquinii Priſci.*

[m] *Plutarch. in vitâ Romuli.*

lus Hoſtilius, I know not. To juſtify the latter ſuppoſition *Livy* ſays, b. i. c. 30. " That *Tullus Hoſti-* " *lius* brought the chief citizens of *Alba* into the *Ro-* " *man* ſenate, in order to encreaſe alſo that part of " the commonwealth [n]:" and *Livy* had juſt before obſerved, " that *Tullus Hoſtilius*, by deſtroying the city " of Alba, and bringing the *Albans* to dwell in *Rome*, " had doubled the number of the inhabitants of *Rome* [o]:" which is a reflexion made alſo by *Florus* and *Aurelius Victor*. *Livy* ſays too, " that *Tullus Hoſtilius*, " after he had encreaſed the Senate by this admiſſion " of the principal *Albans*, built a new Senate-houſe " for their reception, and called it after his own " name [p]."

[n] Principes Albanorum in Patres, ut ea quoque pars Reipublicæ creſceret, legit. *Liv.* l. i. c. 30.

Atque hæ familiæ Albanorum ad Senatum & magiſtratus gerendos admittantur Julia, Servilia, Gegagnia, Metilia, Curiatia, Quintilia, & Clelia. *Dionyſ.* b. iii. c. 30. *Liv.* ibid.

Tullus Hoſtilius Albanos Romam tranſire juſſit. *Aur. Vict.*

[o] Albam Tullus diruit, quam prius omnes opes urbis, ipſumque populum Romam tranſtuliſſet. *Florus.*

Duplicatur civium numerus: & ut omnium ordinum viribus aliquid ex novo populo adjiceretur, Equitum decem turmas ex Albanis legit. *Ibid.* Albanos Romam tranſire juſſit. *Aur. Vict.*

Roma interim creſcit Albæ ruinis: duplicatur civium numerus. *Liv.* l. 1. c. 30.

[p] Templumque ordini ab ſe aucto curiam fecit, quæ *Hoſtilia* uſque ad patrum noſtrorum ætatem appellata eſt. *Liv.* l. i. c. 30.

The

The building of this new Senate houſe *Aurelius Victor* alſo records in the life of *Tullus Hoſtilius* [q]: and it is a circumſtance, which from the reaſon *Livy* gives for it [r], would make one imagine the Senate conſiſiderably encreaſed at that time, ſince it was neceſſary on account of that encreaſe to build a new Senate-houſe to contain them.

Eutropius [s] and *Velleius Paterculus* [t], both of them, as well as *Livy*, place the firſt inſtitution of the Senate prior to the rape of the *Sabins*: but if the account given by *Dionyſius* of the firſt Senators being elected, is a true account, it would be impoſſible for the Senate to have been thus inſtituted and elected before the peace with the *Sabins*, becauſe the *Tribes* and the *Curiæ*, by whom this election is ſaid to have been made, were not inſtituted themſelves in the manner there deſcribed, till after this coalition of the *Romans* and *Sabins* was perfected.

[q] Curiam Hoſtiliam conſtituit. *Aur. Vict. in vitâ Tull. Hoſt.*

[r] See the foregoing note [p], Ordine ab ſe aucto.

[s] Centum ex ſenioribus elegit, quorum conſilio omnes agerent; quos Senatores nominavit propter ſenectutem. Tunc cum uxores ipſe & populus non haberent, invitavit ad ſpectaculum ludorum vicinas urbis nationes, atque earum virgines rapuit. *Eutrop.* l. i. c. 2.

[t] Hic centum homines electos, appellatoſque Patres, inſtar habuit conſilii publici: raptus virginum Sabinarum, &c. *Vell. Pater.* l. i. c. 8. Vide etiam *Juſtin.*

Some authors place the compleat regulation of theſe Tribes and Curiæ ſtill later, in the reign of *Servius Tullius*, the ſixth king of Rome[u]. Under him too, the firſt *Cenſus* was eſtabliſhed: and not, as one ſhould be apt to conclude from Monſ. *Vertot*'s letter to Earl *Stanhope*, under the conſular government. The power of the *Cenſorſhip* was then encreaſed, and detached from the Conſulſhip, but the office was not then firſt eſtabliſhed[v].

In the fourth book of *Livy*, chap. 5. the Tribune *Canuleius* haranguing the people in order to get the law annulled, which was made by the *Decemviri* to prevent intermarriages between the Patricians and Plebeians,

[u] Ab hoc (ſc. Servio Tullio) populus Romanus relatus in Cenſum, digeſtus in Claſſes, Curiis atque Collegiis diſtributus. *Florus*, l. i. c. 6.

Primus omnium (Servius Tullius) Cenſum ordinavit, qui adhùc per orbem terrarum incognitus eſt. Sub eo, Roma, omnibus in cenſum delatis, &c. *Eutrop.* l. i. c. 7. atque *Aur. Victor. in vitâ Serv. Tullii.*

A very long and particular account of this diviſion of the people into claſſes, and the inſtitution of the Cenſus by *Servius Tullius* may be ſeen in *Livy*, b. i. c. 43.

Cenſum enim inſtituit (Servius), rem ſaluberrimam tanto futuro imperio: ex quo belli, paciſque munia non viritim, ut ante, ſed pro habitu pecuniarum fierent. *Liv.* l. i. c. 42.

[v] Idem hic annus (U. C. 311.) cenſuræ initium fuit: M. Geganio Macerino iterum, T. Quintio Capitolino quintum conſulibus. *Liv.* l. iv. c. 8.——Mentio illata ab ſenatu eſt, rem operoſam, ac minime conſularem ſuo proprio magiſtratu egere. *Ibidem.*

ſays,

ſays, " he does not ſee any great reaſon for the Patri-
" cians being ſo proud of their nobility, when the
" greateſt part of them derive it from *Sabins* and *Al-*
" *bans*, who were admitted into the Senate formerly by
" the Kings, and ſince their expulſion, by the choice
" of the people [w]."

The former part of this paſſage [x] ſhews, that *Livy* muſt either think the inſtitution of the Senate was ſubſequent to the peace with the *Sabins*, or that an augmentation of the Senate was then made; which makes him very inconſiſtent with himſelf, their inſtitution having been placed by him at an earlier period: and when he enumerates the tranſactions after that peace, not the leaſt mention, as I have before obſerved, is made by *Livy* of any *Sabins* being brought into the Senate. Beſides which negative proof, *Livy*, after the death of *Romulus*, in two places, which I have already quoted, expreſsly ſays, the Senate conſiſted only of a hundred, their original number.

The latter part of what I have quoted from the ſpeech of the Tribune *Canuleius*, where he ſays, " ad-

[w] Quid? hoc ſi polluit nobilitatem iſtam veſtram, quam plerique oriundi ex Albanis & Sabinis, non genere, nec ſanguine, ſed per coop-tationem in Patres habetis, aut ab regibus lecti, aut poſt reges exactos, juſſu populi. *Liv.* l. iv. c. 4, 5.

[x] Oriundi ex Sabinis.

" mitted

" mitted into the Senate formerly by the Kings, and " ſince their expulſion, by the choice of the people[y]," is ſtrongly againſt the ſuppoſition of any Senators having been elected by the people before the expulſion of the Kings, as related by *Dionyſius*. And though Plutarch, in his life of *Romulus*, confirms the fact of a hundred *Sabin* Senators being added to the Senate, upon the peace with the *Sabins*, yet he gives not the leaſt intimation of this addition being made by the election of the people, any more than the firſt hundred.

Suppoſing the Senators then to have been nominated by the Kings in their inſtitution, there will be no difficulty in accounting, during the regal government, for the manner of filling up the vacancies: whereas, ſuppoſing them elected at firſt, according to *Dionyſius*, there would yet be a difficulty to ſay, in what manner vacancies were filled, and whether all the *Tribes* voted for the filling up that vacancy, or only that particular *Tribe*, or that particular *Curiæ* of a *Tribe*, whoſe repreſentative died, and made the vacancy; as vacancies by deaths are ſupplied in the Houſe of Commons.

The additional Senators choſen out of the *Albans* by *Tullus Hoſtilius* after the deſtruction of *Alba*, (whoſe families are particularly named both by *Livy*

[y] Aut ab regibus lecti, aut poſt reges exactos, juſſu populi.

and

and *Dionyſius* with a very ſmall variation[z],) were not, in all probability, brought into the Senate, whatever the number of them was, by the election of the people: it ſeems probable too, that the hundred *Plebeians* added by *Tarquinius Priſcus* to the Senate, were rather nominated by the King, than choſen by the people, conſidering the manner in which this circumſtance is related, not only by all the *Latin* authors, but even by *Dionyſius* himſelf[a].

Livy ſays, b. i. c. 35, that *Tarquin*, to ſtrengthen both himſelf and the republic, added a hundred new Senators to the Senate, who were afterwards called *minorum gentium*, the younger nobility. I ſhall not here enter into that labyrinth of diſtinctions between the *elder* and the *younger* nobility; the *majorum* and

[z] By Dionyſius—Julia, Servilia, Gegagnia, Metilia, Curiatia, Quintilia, & Clælia. B. iii. c. 30.——By Livy—Julios, Servilios, Quintios, Geganios, Curiatios, Cœlios. L. i. c. 30.

[a] Hic & Senatus majeſtatem numero ampliavit. *Florus*, l. i. c. 5.

Centum patres in curiam legit, qui minorum gentium ſunt appellati. *Aur. Vict.*

Nec minus regni ſui firmandi, quam augendæ reipublicæ memor, centum in patres legit, qui deinde minorum gentium ſunt appellati: factio haud dubia regis, cujus beneficio in curiam venerant. *Liv.* l. i. c. 35.

Favorem plebis ſibi conciliare ſtudens, quem admodum ſuperiores reges fecerant, hoc beneficio eam ſibi devinxit: ſelectos ex omni plebeiorum numero centum viros in patriciorum ordinem retulit, & in Senatorum numero poſuit. *Dionyſ.* l. iii. c. 67.

the *minorum gentium*, or the *Patres* and the *Conſcripti*, which took their riſe at this time, and are ſubjects as little intereſting as they are clear.

I ſhall only repeat what I have already ſaid, that by the manner, in which all authors ſpeak of this addition made by the firſt *Tarquin* to the Senate, it is natural to conclude, that the voice of the people had nothing to do with it.

Eutropius relating this paſſage, ſays, "*Tarquinius* "*Priſcus* doubled the number of Senators[*]:" ſo that according to him there could have been no addition, either of *Sabins* or *Albans* made to the Senate, ſo as to make it more numerous from its firſt eſtabliſhment to that time; for if the elder *Tarquin* doubled the number of Senators by adding a hundred, (and all authors agree in that fact of his adding only a hundred,) the Senate could have conſiſted but of a hundred before.

The reaſon which *Vertot* gives for believing theſe hundred Plebeians, added by *Tarquin* to the Senate, were not elected by the people, is, in my opinion, like moſt of his other reaſons in his letter to Earl *Stanhope*, not the beſt he might give in ſupport of his own aſſertions. He founds his reaſon for this belief, or more

[*] Priſcus Tarquinius numerum Senatorum duplicavit. *Eutr.* l. i. c. 6.

properly

properly ſpeaking, gives it as a proof of the fact, that *Livy* calls them "a ſure faction for the King, by "whoſe grace they were admitted [c];" and that *Livy*, in another place, makes the ſecond *Tarquin* "remind "theſe Senators of this benefaction of his father [d]." But if there never had been, as there never were, any Plebeians in the Senate till the reign of the firſt *Tarquin*, and that he cauſed a hundred to be elected by the people, and added to the Senate, *Tarquin*'s being thus author of ſuch new privileges and honours beſtowed on the body of Plebeians, and on theſe hundred in particular, was an obligation and benefaction, that would equally warrant what is above quoted by *Vertot* from *Livy*, without each particular Senator having been nominated by *Tarquin*.

But the chief reaſons for believing theſe hundred Plebeians were added to the Senate on the mere nomination of the firſt *Tarquin*, ought to be, in my opinion, firſt, the natural ſenſe of all the authors already quoted, who relate this circumſtance: next, that

[c] Factio haud dubia regis, cujus beneficio in curiam venerant. *Liv.* l. i. c. 35.

[d] His muliebribus inſtinctus furiis Tarquinius, circumire & prehenſare minorum maxime gentium patres, admonere paterni beneficii, ac pro eo gratiam repetere. *Liv.* l. i. c. 47.

from the general tenor of *Livy*'s Hiſtory, it does ſeem that, during the regal government, the inſtitution of the Senate, the additions to it, and the ſupplying of vacancies, were all the effects of the ſovereign power of the Kings. And beſides the general tenor of his Hiſtory, it is expreſsly ſaid, in the ſpeech of the Tribune *Canuleius*, who makes that diſtinction, already quoted, "between the Senators, during the monarchy, "choſen by the Kings, and thoſe after their expulſion, "choſen by the people."

Add to this, what is ſtill a better authority than *Livy*, as well as an earlier, which is that of *Cicero*; who, in his Oration for *Pub. Sextius*, gives it to be underſtood, that till the eſtabliſhment of the conſular government, the people had no ſhare in chuſing Senators[e].

Vertot pretends that *Livy*'s ſaying "the ſecond *Tar*-"*quin* reſolved not to fill up the Senate, in order to "make their body leſs reſpectable[f]," is a ſure proof,

[e] Majores noſtri, cum regum poteſtatem non tuliſſent, ita magiſtratus annuos creaverunt, ut conſilium Senatus reipublicæ præponerent ſempiternum; deligerentur autem in id conſilium ab univerſo populo. Adituſque in illum ſummum ordinem omnium civium induſtriæ ac virtuti pateret. *Cic. Orat. pro P. Sextio.*

[f] Numero imminuto, ſtatuit nullos in patres legere, quo contemptior paucitate ipſâ ordo eſſet. *Liv.* l. i. c. 49.

that

that the vacancies in the Senate were filled up by the arbitrary will of the Kings. But here *Vertot* again in my opinion gives a bad reaſon to ſupport a good conjecture. For as even *Dionyſius*, who ſays the Senators were elected during the regal government, ſtill allows, that the Kings had the ſole power of ordering the people to elect new Senators, and the ſole power of enrolling the Senators, when elected; ſo *Livy*, and even *Dionyſius* himſelf, might very properly have made uſe of thoſe words, and yet mean no more by them, than an Engliſh Hiſtorian would mean by ſaying King *Charles* the Second, or King *James* the Second would not call a Parliament; that is, they would not cauſe a Parliament to be choſen, not that they would not chuſe one.

Upon the whole, with regard to the Senate, during the time of the regal government, you ſee from what authors the uncertainty as to the following points ariſes; and that there is room to doubt,

Whether the Senate was firſt inſtituted by *Romulus*, before or after the peace with the *Sabins*, and his joint reign with *Tatius*?

If before, whether there was any addition made at that æra?

What addition was made after the deſtruction of *Alba*?

Of what number the Senate conſiſted, when the addition of the hundred Plebeians was made by *Tarquinius Priſcus*?

And whether there were any Senators ever elected by the people during the reign of the Kings?

There is one point relating to the Senate which ſeems to me to be clear from all authors, which is, that during the regal government, whether their number was two or three hundred, the number was fixed, which they were not allowed to exceed, though by vacancies unfilled they might fall ſhort of that number.

After the expulſion of the Kings, and the eſtabliſhment of the Conſular government, the Senate was filled up to the number of three hundred by the Conſul *Brutus*, according to *Livy*[g]: by *Brutus* and *Valerius* together, according to *Dionyſius*[h]: and by *Valerius* alone, according to *Plutarch*[i], and *Feſtus*[k].

[g] Deinde quo plus virium in ſenatu frequentia etiam ordinis faceret, cædibus regis diminutum, patrum numerum, primoribus equeſtris gradus lectis, ad trecentorum ſummam Brutus explevit. *Liv.* l. ii. c. 1.

[h] Primum optimos quoſque de plebe delectos, in patricium ordinem retulerunt, & ex his Senatum expleverunt uſque ad trecentorum numerum. *Dionyſ.* l. v. c. 13.

[i] Vide *Plutarch. in vitâ Publicolæ.*

[k] P. Valerius conſul propter inopiam patriciorum ex plebe allegit in numerum ſenatorum 164: ut expleret numerum trecentorum. *Feſtus.*

But it does not appear from any of theſe authors, whatever Conſuls or Conſul brought theſe new Senators into the Senate, in what manner it was done, whether by election, or by arbitrary nomination: and it is equally unclear, whether the number at this time was increaſed beyond what it had ever formerly been, or whether it was only filled up to its ancient complement, before it had been thinned by natural deaths, and the cruelty of *Tarquin*.

If it is natural hitherto to ſuppoſe, that the Senate conſiſted of a limited number, and that I ſhould aſk, "when then did it begin to be unlimited?" I imagine you would anſwer, "from the time that the annual "magiſtrates had a right, not only during their magiſ-"tracy, but ever after, to ſit and vote there." But the anſwer, you muſt allow, would be doubly conjectural; in the firſt place, as it muſt take this abſolute right of the annual magiſtrates for granted; and in the next, as it muſt of courſe ſuppoſe, that the Senate might exceed this number of three hundred; which I do not affirm it might not, but which I do not believe any man, from any Hiſtory, can ſhew me it did, between the time of the firſt *Brutus*, and the ſedition of the *Gracchi*, which was about four hundred years.

And

And if every annual magiſtrate, whether *Quæſtor*, *Tribune*, *Edile*, *Prætor*, or *Conſul*, had a right of courſe, from the time he was choſen into theſe offices, to ſit and vote in the Senate ever after, it is not only poſſible but probable, that ſome years the body of the Senate muſt have ſwelled beyond the bounds of three hundred; eſpecially, ſince the Law you ſpeak of, that enjoined every candidate for theſe offices to have gone through the gradation, and made him incapable of obtaining any one, without having firſt exerciſed that below it, was one of the *Cornelian* laws, and conſequently not enacted till *Sylla*'s time[1].

Both you and Monſ. *Vertot*, in his letter to Earl *Stanhope*, lay it down as an undeniable propoſition, that theſe annual magiſtrates had a right, not only during their magiſtracies, but ever after, to ſit and vote in the Senate, even though their ſeats were not made perfect and compleat by the ceremony of the Cenſor's enrollment, which you look upon to have been merely matter of form.

It may ſeem very impertinent and preſuming in me to diſpute two ſuch great authorities; but my reaſons

[1] Ne quis Prætúram ante Quæſturam peteret, neve Conſulatum ante Prætúram.—See the Supplement to *Livy* by *Freinſhemius*, tranſlated from *Appian*, Vol. II. b. i. de Bel. Civ.

for doubting upon this point, you will find in what follows.

Livy, in enumerating thoſe citizens, who were killed at the battle of *Cannæ*, among many others of great rank, mentions eighty, "who, ſays he, were either "Senators already, or ſuch as would ſoon have been "choſen into the Senate, on account of the offices "they had borne in the ſtate[m]." From which paſſage I think it is natural to conclude, that there were men, who had filled theſe magiſtracies, who were not yet in the Senate. I grant alſo, that it is as natural to conclude from this paſſage, that the executing theſe magiſtracies gave a ſort of claim to being choſen into the Senate by the *Cenſors*, though it did not give an immediate ſeat without their concurrence.

Another paſſage in *Livy*, of the ſame tenor with this, may be found in b. xxiii. c. 22 and 23, where he gives an account of the creation of a ſecond *Dictator* whilſt the firſt was ſtill in office, during the ſecond *Punic* war. This creation of a ſecond *Dictator* was made merely to fill up the Senate, which had been ſo reduced by the ſlaughter, deſcribed in the foregoing book, at the battle of *Cannæ*.

[m] Octoginta præterea aut ſenatores, aut qui eos magiſtratus geſſiſſent, unde in ſenatum legi deberent. *Liv.* l. xxii. c. 49.

The

The ſecond *Dictator* was *M. F. Buteo*, and the reaſon alleged for this extraordinary proceeding in having two *Dictators* at a time, was, according to *Livy*, "the "Senators being ſo few, that there were not enough "to aſſemble and tranſact the public buſineſs[n]." *M. F. Buteo* was pitched upon for this office, "as he was the "moſt ancient of thoſe, who had ever been *Cenſors*[o]:" and as it was againſt the Law, to have the ſame perſon twice *Cenſor*, probably that was the reaſon for creating this mixed magiſtrate with the authority of *Cenſor*, without the name; and with the name of *Dictator*, without the privileges[p]. This cenſorial *Dictator*, in his ſpeech on the acceptance of his new office, declares,

[n] Quum cætera quæ continuis cladibus fortunæ minuerat, quantum conſiliis humanis aſſequi poterant, Patres expleſſent, tandem ſe quoque & ſolitudinem curiæ, paucitatemque convenientium ad publicum concilium reſpexerunt. *Liv.* l. xxiii. c. 22.

[o] Dictatorem qui Cenſor ante fuiſſet, vetuſtiſſimuſque ex eis, qui viverent cenſoriis eſſet, creari placuit, qui ſenatum legeret: accirique C. Terentium conſulem ad dictatorem dicendum juſſerunt. Qui quum ex Apulia rediiſſet, nocte proxima, ut mos erat, M. Fabium Buteonem ex S. C. ſine magiſtro equitum dictatorem in ſex menſes dixit. *Ibid.*

[p] Is, ubi cum lictoribus in roſtra aſcendit, neque duos dictatores tempore uno, quod nunquam antea factum eſſet, probare ſe dixit: neque dictatorem ſe ſine magiſtro equitum: nec cenſoriam vim permiſſam uni & eidem iterum: nec dictatori, niſi rei gerendæ cauſa creato, in ſex menſes datum imperium. C. 23.

"he

" he will not turn any man out of the Senate, nor, in " chuſing new Senators, ſhew any preference between " man and man, but between order and order[q]:" yet his whole ſpeech ſhews his power to do either of theſe things was abſolute, and at the ſame time ſhews that power to be only juſt ſuch an one, as the *Cenſors* always had.

Purſuant to this declaration, " after having called " over the old Senators, he firſt added to them thoſe, " who had exerciſed the *Curule* magiſtracy ſince the " conſulſhip of *L. Æmilius* and *C. Flaminius*, and " were not yet choſen into the Senate; then thoſe who " had been *Ædiles*, *Tribunes* of the people, or " *Quæſtors*: and afterwards he choſe ſome, who " had never been in any public office, but were " diſtinguiſhed, by having received a *Civic* crown, " or by having ſome ſpoils, taken from the enemy, " hung up on their houſes[r]."

From

[q] Neque ſenatu quemque moturum ex iis quos C. Flaminius, & L. Æmilius cenſores in ſenatum legiſſent: tranſcribi tantum recitarique eos juſſurum, ne penes unum hominem judicium arbitriumque de fama ac moribus ſenatoris fuerit: & ita in demortuorum locum ſublecturum, ut ordo ordini, non homo homini prælatus videretur. *Liv.* l. xxiii. c. 23.

[r] Recitato vetere ſenatu, inde primos in demortuorum locum legit, qui poſt L. Æmilium & C. Flaminium cenſores curulem magiſtratum cepiſſent, necdum in ſenatum lecti eſſent:—tum legit qui ædiles, tribuni

From this whole tranſaction, therefore, I make the two following inferences—Firſt, that as the power of *Buteo* under the title of *Dictator*, was nothing more than that of a ſole *Cenſor*, ſo whatever he did, or intimated he could do, the *Cenſors* might do the ſame.

Secondly, I conclude from the *ſolitudinem Curiæ & paucitatem convenientium ad publicum conſilium*, that is, "from the emptineſs of the Senate," while there were ſo many men in *Rome*, who had filled the *Curule* magiſtracy, and were afterwards choſen into the Senate by *Buteo*, that all thoſe, who had exerciſed theſe offices, did not, as you and *Vertot* ſay, ſit and vote of courſe in the Senate ever after: for had they done ſo, let the roll have been ever ſo thin, there could not have been that emptyneſs, at leaſt, deſcribed in the aſſembly; nor would *Livy*, in enumerating theſe officers, with the other perſons added at this time to the Senate, have made no diſtinction between *Buteo*'s chuſing thoſe, who had never before ſat in the Senate, and only enrolling thoſe, who were already actually ſitting there: he would have diſtinguiſhed between thoſe two claſſes, as well as between the

buni plebeii, quæſtoreſve fuerant: tum ex iis qui magiſtratus non cepiſſent, qui ſpolia ex hoſte fixa domi haberent, aut civicam coronam accepiſſent. *Liv.* ibid.

old

old and the new Senators, which he makes *Buteo* do in his ſpeech[s]; and does afterward himſelf, when he ſpeaks as the Hiſtorian[t].

Beſides theſe paſſages in *Livy*, there is one in *Valerius Maximus*, b. ii. c. 2. which plainly demonſtrates, that all the annual magiſtrates did not, after the expiration of their offices, ſit and vote in the Senate of courſe; but that the authority and choice of the Cenſors was abſolutely eſſential to bring them there; and though their magiſtracies expired three or four years before there was to be a new *Cenſus*, they were, during that interval, not of the Senate. The paſſage in *Valerius Maximus*, which I refer to, is that, where ſpeaking of *Fabius Maximus*, relating to *Publius Craſſus* ſome ſecret tranſaction in the Senate, which regarded the third *Punic* war, he ſays, "*Fabius* was "drawn into this error by remembering, that *Craſſus* "had been Quæſtor three years before, and not re-"collecting, that *Craſſus* had not yet been choſen "into the Senatorial order by the Cenſors, by which "ſtep alone, thoſe, who had been magiſtrates, ever "entered into the Senate[v]."

Aulus

[s] Tranſcribi tantum recitarique eos juſſurum.

[t] Recitato vetere ſenatu inde primos, &c. *ut ſup.*

[v] Adeo autem magnâ charitate patriæ omnes tenebantur, ut arcana conſilia P. Conſcriptorum multis ſeculis nemo ſenator enuntiaverit: Q. Fabius Maximus

Aulus Gellius [t] b. iii. c. 18. concerning the *Senatores Pedarii*, I own, ſeems to confirm your opinion and *Vertot*'s, and ſo does *Feſtus* [u], b. xvii.; but this contributes to ſhew what was the ſingle intent of this Letter, and that is, notwithſtanding what you ſay, of thinking this point "of the manner of filling up "the Roman Senate" long ago ſettled, how perplexed the queſtion ſtill remains.

Even you allow, "that it was the province of the "Cenſors, in any remarkable deficiency of the Senate, "to ſupply vacancies by taking men out of the Equeſ-"trian order, who had never borne any office in the "ſtate. But then you add, we may preſume this no-"mination was not made arbitrarily, nor without the

Maximus tantummodo, & is ipſe per imprudentiam, de tertio Punico bello indicendo, quod ſecreto in curia erat actum, Publio Craſſo, rus petens, domum revertenti in itinere narravit;—memor eum triennio ante Quæſtorem factum, ignaruſque nondum a cenſoribus in ordinem ſenatorium allectum, quo uno modo his, qui jam honores geſſerant, aditus in curiam dabatur. *Val. Max.* l. ii. c. 2. *de magiſtratuum atque ordinum officiis & inſtitutis.*

[t] Qui nondum a cenſoribus in ſenatum lecti erant, ſenatores quidem non erant, ſed quia honoribus populi uſi quidem erant, in ſenatum veniebant, & ſententiæ jus habebant. *Aul. Gel.* l. iii. c. 18.

[u] Ii qui poſt luſtrum conditum ex junioribus magiſtratum ceperunt, & in ſenatu ſententiam dicunt, & non vocantur ſenatores ante quam in ſenioribus ſunt cenſi. *Feſtus*, l. xvii.

"approbation

" approbation both of Senate and people." How that approbation of Senate and people, if any ſuch there were, was aſked or given, is juſt what I ſhould be glad to know; for as I find not the leaſt foundation in Hiſtory for this preſumption, ſo my preſuming it, muſt be merely matter of faith.

In all probability, the infamous promotions made into the Senate in the cenſorſhip of *Appius Claudius* and *C. Plautius*[x], in the 442d year of *Rome*, which, by the mere power of the Conſuls, were vacated, or ſet aſide the year after[y], were promotions made without any concurrence either of Senate or people: and it is equally probable, that they were made in the ordinary way, otherwiſe it would have been mentioned by the Hiſtorian, that they were not, and *that* reaſon given for their being no better approved of. This paſſage therefore I take to be a proof of the Cenſor's power having been much ſuperior to what you rate it.

[x] Ob infamem atque invidioſam ſenatus lectionem verecundia victus collega; ſc. C. Plautus, magiſtratu ſe abdicaverat. *Liv.* l. ix. c. 29.

[y] Itaque conſules qui eum annum ſecuti ſunt, C. Junius Bubulcus—& Q. Æmilius Barbula—initio anni queſti apud populum, deformatum ordinem prava lectione ſenatus, qua potiores aliquot lectis præteriti eſſent: negaverunt eam lectionem ſe, quæ ſine recti pravique diſcrimine ad gratiam et libidinem facta eſſet, obſervaturos: & ſenatum extemplo citaverunt eo ordine, qui ante cenſores Appium Claudium & C. Plautium fuerat. *Liv.* l. ix. c. 30.

" *Sylla* the Dictator, you ſay, when, after the civil " wars and proſcriptions, he filled up the Senate with " three hundred out of the Equeſtrian rank, permitted " the people to chuſe them out of the ſeveral tribes."

But there is only one ſingle authority that I know of for ſaying theſe vacancies in *Sylla*'s time were filled up by the choice of the people. *Plutarch*, in the life of *Sylla*, gives not the leaſt foundation for this opinion, any more than *Aurelius Victor*, or *Velleius Paterculus*, or *Eutropius*. That book of *Livy*, in which this circumſtance would have appeared, if recited by him, is loſt; and in the Breviary of the Decades of *Livy*, by *Florus*, it is ſaid, " that *Sylla* filled up the Senate out " of the Equeſtrian order [a]," but not the leaſt mention is made by *Florus* of theſe new Senators having been elected by the Tribes.

The only authority that I know for concluding theſe vacancies were filled up by the Tribes, is in the Supplement to *Livy* by *Freinſhemius* [b], which is a tranſlation in that part from *Appian*, vol. II. b. i. *de bellis civil.*

But as no other author confirms this opinion, and as no author whatever but *Dionyſius Halicarnaſſus*, ſpeaks

[a] Senatum ex equeſtri ordine ſupplevit. *Florus Epit. Liv.* l. lxxxix.

[b] Senatum per ſeditionum bellorumque clades, infrequentem, tributis comitiis, ex equeſtri ordine ſupplevit. *Sup. Liv.* l. lxxxix. c. 11.

of

of any election of Senators at any time being made by the *Tribes*, there is ſurely reaſon to doubt, whether *Sylla*, acting with the united powers of *Cenſor*, *Dictator*, and even *King*[b], ſhould on this occaſion exerciſe leſs power in ſo material an occurrence, than each of thoſe offices had formerly done, on the like occaſions ſeparately.

Vertot ſays in his Letter to Earl *Stanhope*, p. 35, "*Sylla* & *Marius* chefs de la premiere guerre civile, "remplirent le Senat de leur creatures." From whence it is plain, that *Vertot*, as far as you allow him to be any authority, thought *Sylla* conſulted no body but himſelf on this occaſion, and that he gave theſe Knights the rank of Senators, in the ſame manner that *Appian* ſays, "he at once made ten thouſand "ſlaves freemen and citizens of *Rome*[c]," which was by his own arbitrary will. *Salluſt* alſo, I think, gives it to be underſtood, that *Sylla*'s manner of making Senators muſt have been pretty arbitrary, when he ſays,

[b] Nec defuerunt dicaces homines, qui dominatum ejus negativum regnum facetè vocarent, quod ſolo nomine regis abſtineret. *App.* l. i. *de bell. civ.*

Sic populus Romanus rurſum ad regni formam rediit; & nihil Syllæ defuit ad abſolutam tyrannidem; & ſecures ei ut Dictatori præferebantur 24, quem admodum olim regibus. *Idem.*

[c] Plebi vero inſeruit ex proſcriptorum ſervis pluſquam decem mille, donatos prius libertate civitateque. *Appian. de bell. civ.* l. i.

" ſeveral common ſoldiers became Senators by fighting " under the victorious banners of that leader[a]," which in all probability was not done by the voice of the people.

But where *Vertot* has ever read that *C. Marius* brought any new members into the Senate, I know not: and I am apt to think no body elſe ever read of it but in him.

I cannot help here remarking too, that the memorial of Earl *Stanhope*, to which *Vertot*'s Letter is in anſwer, ſeems to contain rather the queſtions of a curious ſchool-boy, than the doubts of a good claſſic ſcholar.

Had he only aſked, " what was the different manner " of filling up the Senate at different periods?" I think it would have been a queſtion not unbecoming one learned man to put to another: but to aſk " how, " all the Senators being *Patricians*, it could happen, " that there were any *Patricians*, that were not Se- " nators?" was juſt as reaſonable, as it would be for any one to aſk, how, all the Peers of England being Nobles, it can happen, that there ſhould be any one of the nobility, who is not a Peer? eſpecially, ſince

[a] Multi memores Sullanæ victoriæ, quod ex gregariis militibus Senatores videbant. *Salluſt. Bell. Catil.*

in

in *Livy*, as well as other authors, Earl *Stanhope* muſt have read, that all the deſcendants of the firſt inſtituted Senators were called *Patricians*[e].

His queſtion about elderſhip, and hereditary ſucceſſion into the Senate, is as little like a man of learning, as the firſt: ſince there is not the leaſt colour for an opinion of this kind to be found in any one part of the Roman Hiſtory by any one author.

His inference from the creation of the Dictator *M. F. Buteo* in the ſecond *Punic* war, is as improperly drawn, as his other two queſtions are improperly aſked.

It may give me an air of arrogance and ſufficiency perhaps, which, of all airs, is what I would leaſt give myſelf, to add to this comment on *Lord Stanhope*'s queſtions any remarks on *Vertot*'s anſwer, that may ſhew I am as little ſatisfied with the one as the other; but I cannot reſiſt ſaying, that I not only agree with you in thinking he treats this ſubject with great perplexity, but alſo that he makes moſt ſurprizing miſtakes for a man, who, conſidering the ſubject he has written upon, ought to have been much better verſed

[e] Patriciique progenies eorum appellati. *Liv.* l. i. c. 8. Vid. *Dionyſ. Hal.* l. ii.

Hanc originem nomen Patriciorum habet. *Vell. Pat.* l. i. c. 8.

Qui vero ex his primoribus centum patribus geniti ſunt, Patricii nuncupati ſunt. *Cic. de Senect.*

in every particular relating to the Roman Hiſtory: nor does he only, as I before obſerved, ſupport good aſſertions in this Letter with bad reaſons, but in ſeveral places his aſſertions are no better founded, than his conſequences are deduced.

And ſince I have gone ſo far, I cannot help adding, that though I ſhould have a very indifferent opinion of any body's taſte, who was not pleaſed with Monſ. *Vertot*'s ſtile and manner of relating in his *Revolutions Romaines*; yet I cannot ſay I ſhould have a very good one of the depth of their learning and judgment, who look upon him always as the beſt authority for facts; but ſhould think ſuch readers choſe their authorities little better, than Monſ. *Vertot* on ſome occaſions does his own, who, in his laſt Book particularly, chuſes them ſo ill, that he perpetually quotes *Appian* and *Plutarch*, who lived at ſo great a diſtance from the times he is there deſcribing, for facts and occurrences, of which the accounts are actually remaining in the Letters of *Cicero*, who lived in that Age, and whoſe Letters, neither to *Atticus* nor any other perſon, are ever once mentioned on this occaſion by *Vertot*, any more, than if there were no ſuch things extant.

What Monſ. *Vertot* means by ſaying in anſwer to Lord *Stanhope*'s ſecond queſtion, "qu'il fallloit à la verité "etre Patricien pour etre Senateur," is inconceivable; when

when there was not one augmentation made of the Senate, nor any repleniſhment of vacancies recorded, that I know of, from the foundation of *Rome* to the reign of *Auguſtus*, that is not a flat contradiction to this aſſertion. The hundred added by *Tarquin* the Elder were *Plebeians*[f]: thoſe brought in at the beginning of the Conſular government by *Brutus* or *Valerius* were of the ſame order[g]. Thoſe who came in, if any ſuch there were, by virtue of their offices, after the *Plebeians* were made capable of holding thoſe offices, might be as well *Plebeians* as *Patricians*. Many of thoſe added by *Buteo* the Dictator were *Plebeians*. If the *Gracchi* added any, which is uncertain, they were Knights[h]. Thoſe whom *Sylla* brought into the Senate were alſo of the equeſtrian order[i]. Thoſe introduced by *Cæſar*, the ſcum of all *Rome*[k].

[f] Selectos ex omni plebeiorum numero centum viros in patriciorum ordinem retulit, & in Senatorum numero poſuit. *Dionyſ.* l. iii. c. 67. Vid. etiam *Liv.* & *Aurel. Vict.*

[g] In hoc tamen omnes conſentiunt ex plebe novos Senatores eſſe allectos. *Manutius, de Sen. Rom.* Vid. *Liv.* & *Plutarch. in vitâ Publicolæ.*

[h] Equeſtrem ordinem cum Senatu conſentientem corruperat; ut ſexcenti ex equitibus in curiam ſublegerentur. *Flor. Epit.* l. lx.

[i] Senatum ex equeſtri ordine ſupplevit [Sulla]. *Flor. Epit.* l. lxxxix. See alſo *Appian.*

[k] Adſcripſit complures in Senatum nullo in diſcrimine ponens, ſive quis miles eſſet, ſive libertinus. *Dion. Caſſius*, l. xliii.

The *Triumvirs* followed this laudable example of *Cæsar*; for after proscribing the greatest and best men of the Senate, they supplied their places with the meanest and the worst[l]: with their common soldiers, their freed-men, and according to *Dion Cassius*, even with their slaves[m].

Had *Vertot* said, instead of what he does say, "that "every man, though a Plebeian, became a Patrician "as soon as he became a Senator" (as every man in England, though of the lowest birth, becomes one of the Nobility, as soon as he is created a Peer) he would have been intelligible, but even then only partly in the right: but as it is, as far as he is intelligible, he is absolutely in the wrong.

Under *Augustus*, *Suetonius* and *Dion Cassius* both inform us, that the Senate was twice new modelled[n]: the first time, in a manner never before practised, which was by every Senator, as he was named, naming another: the second time, every Senator was chosen

[l] Quidem indignissimi, & post necem Cæsaris, per gratiam & præmium allecti, quos *Orcinos* vulgus vocabat. *Suet. in vitâ Aug.* c. xxxv.

[m] In senatum à Triumviris adscripti sunt multi non modo è sociis, militibusve, & libertinis; sed etiam servi. *Dion. Cas.* l. xlviii.

[n] Duabus lectionibus, prima ipsorum arbitratu, quo vir virum legit: secunda suo & Agrippæ. *Suet. vit. Aug.* c. xxxv. Vid. etiam *Dion. Cas.* l. liv.

by

by *Auguſtus* and *Agrippa*, who, according to *Dion Caſſius*, took upon them the title of *Cenſors* for that purpoſe°: which, by the bye, looks as if *Dion Caſſius* thought the power of Cenſor to be much greater, than you eſteem it. The whole of theſe two tranſactions is to be found in *Dion Caſſius*, b. lii. and liv. very minutely related.

As weary as I am of collecting all this ſtuff, and as weary as, I fear, you will be of reading it; I cannot quit the ſubject without mentioning two particulars more, which regard the queſtion of filling up the Senate: and thoſe are, firſt, the qualification neceſſary to being made a Senator: ſecondly, the number of which the Senate conſiſted at different periods.

As to the firſt, I know there were two ſorts of qualifications neceſſary (the ſame as thoſe requiſite in England for a capacity of being elected a member of the Houſe of Commons), which were, Age and Fortune. The Age you ſay was thirty years old. *Dion Caſſius*, b. lii. ſays, twenty-five. The Fortune, I believe was eight hundred thouſand ſeſterces: but I confeſs I am entirely ignorant when theſe qualifications were firſt made requiſite. The qualification of Age

° Deinde Cenſor collega Agrippa fuit, & Senatum examinavit. *Dion. Caſ.* l. lii.

was

was often diſpenſed with in the candidates for offices. And for a long time it is very plain there was no regard had to Fortune in conferring the higheſt dignities in the Commonwealth. *Valerius Publicola*, one of the firſt Conſuls, died ſo poor, that he was buried at the expence of the Public [p].

Every body knows *Quintus Cincinnatus* was taken from the plough to be made Dictator, and returned to it again at the expiration of his office. *Attilius Regulus* was another example of the poverty of thoſe, who in later times held the firſt rank in power and dignity of the ſtate; for having conquered the *Carthaginians* in *Africa*, he petitioned the Senate to be recalled, that he might take care of his landed eſtate of four acres of land, which in his abſence had been neglected by his ſervants.

Æmilius Paulus ſurnamed *Macedonicus*, who did not die worth ſix thouſand pounds, was ſtill a later example of the poverty of the *Roman* Conſuls; even after they had made the greateſt conqueſts, been diſtinguiſhed by the moſt magnificent triumphs, and added immenſe ſums to the public Treaſury.

[p] Mortuus eſt adeo pauper, ùt collatis a populo nummis, ſumptum habuerit ſepulturæ. *Eutrop.* l. i. c. 11. See alſo *Plutarch* in the Life of *Valerius Publicola*; and *Valerius Maximus de paupertate laudatâ*, l. iv. c. 4.

The

The vouchers for theſe examples are all ſo well known, by being mentioned in every Latin Hiſtorian, and ſome Greek ones, that it is unneceſſary, and would be extremely tedious to quote and tranſcribe them. Many more examples of this poverty among the dignified Romans, even when the ſtate itſelf was greatly enriched and encreaſed, may be found collected together in *Valerius Maximus*, b. iv. c. 4. *de paupertate laudatâ*, and in the diſcourſes of *Machiavel* upon *Livy*, b. iii. c. 25.

That the moneyed qualification for a Senator was encreaſed by *Auguſtus* from eight hundred thouſand ſeſterces to one million two hundred thouſand, appears in *Dion Caſſius*, b. lv. and *Suetonius* [q].

That the eſtate neceſſary to qualify a Knight was four hundred thouſand ſeſterces may be ſeen in *Pliny*'s Epiſtles, b. i. ep. 9.

As to the uncertainty of the number of which the Roman Senate conſiſted during the regal government; I need not here recapitulate what has been ſaid already on that ſubject, at the beginning of theſe papers.

From the time of the eſtabliſhment of the three hundred Senators by the firſt Conſul, to the time of the

[q] Senatorum cenſum ampliavit, ac pro octingentorum millium ſummâ duodecies H. S. taxavit. *Sueton. vit. Aug.* c. xli.

Octoginta uſque ad duodecies ſeſtertium adauxit. *Dion. Caſ.* l. lv.

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Gracchi,

Gracchi, I find no poſitive aſſertion of their number being limited or unlimited, nor any ſuggeſtion that it ever exceeded three hundred.

The Breviary of *Florus* on the 60th book of *Livy*, which is loſt, ſays that *Caius* the younger *Gracchus*, brought ſix hundred Knights into the Senate.

But the Hiſtory of *Florus* is ſo far from corroborating this teſtimony of the Breviary, that this acquiſition of power gained at this time to the Knights by the cabals of the *Gracchi*, and the ſubſequent ſedition of *Druſus*, is there in two places quite differently related [s].

This paſſage in the Hiſtory of *Florus* differing from the Breviary of *Livy* by *Florus*, is perhaps one reaſon, among many others of the ſame nature, that has made many people doubt, whether theſe two works were both of the ſame *Florus*: and ſome learned men affirm they were not [t].

Plutarch,

[s] Tertiam legem, quâ equeſtrem ordinem cum ſenatu conſentientem corruperat (trecenti ſenatores erant ſexcenti equites) ut trecentis ſenatoribus admiſcerentur, id eſt, ut equeſter ordo bis tantum virium in ſenatu haberet. *Flor. Epit. Liv.* l. lx.

[s] A ſenatu in equitem tranſlata judiciorum poteſtas. *Florus*, l. iii. c. 13.

Judiciaria lege Gracchi diviſerant populum Romanum & bicipitem ex una fecerant civitatem: equites Romani, tanta poteſtate ſubnixi, ut qui fata fortunaſque principum haberent in manu, interceptis vectigalibus, peculabantur ſuo jure Rempublicam. *L. Florus*, l. iii. c. 17.

[t] Valde falluntur, qui Florum putant in Hiſtoriâ ſuâ Epitomen nobis Livii dare voluiſſe; ſiquidem crebro à Livio recedit. Nec facilè dixerim,

Plutarch, whoſe authority I value more than that of any other ſingle author, ſays, in the life of *Caius Gracchus*, "that *Gracchus*, to three hundred Senators "joined three hundred Knights; and that in all ju- "dicial proceedings upon criminal caſes, theſe ſix "hundred ſat in judgment together[v]."

It is uncertain therefore, whether *Caius Gracchus* added to the number of the Senate out of the equeſtrian order, or whether according to *Appian*, vol. II. b. i.[u] and *Velleius Paterculus*, b. ii. c. 6.[w] he only took ſome rights of judicature from the Senate, and tranſferred them to the Knights. Theſe rights were reſtored to the Senate by *Sylla*[x]. But of what number the Senate conſiſted, after the new Senators were introduced by *Sylla*, is no where that I know of, at leaſt exactly, to be found.

dixerim, idemne, an alius ſit, qui ſingulorum ferè Livii Librorum argumenta reliquit, quæ hodièque extant, etiam Librorum, qui deperierunt. *Voſſius de Hiſt. Lat.* l. i. c. 30.

[v] Ut 300 equites ſimul cum 300 ſenatoribus judicarent. *Plut. in vitâ Gracchorum.*

[u] Ita ad equites judicia Plebiſcito devenerunt. *Appian. de Bell. civ.* l. i.

[w] Judicia a Senatu transferebat ad Equites. *Vell. Pater.* l. ii. c. 6.

[x] Illud autem nullam habet dubitationem, ſeptennio poſt L. Syllam Dictatorem legem tuliſſe, ut ſoli ſenatores judicarent. cujus legis Pedianus & Cicero meminerunt. *Sigonius*, l. ii. c. 18.

That the number was not leſs than four hundred and fifteen in the time of *Cicero* appears from one of *Cicero*'s Letters to *Atticus*, b. i. ep. 14.[y]

By *Julius Cæſar* the number of Senators was ſwelled to above nine hundred, and ſwelled, according to *Suetonius* and *Dion Caſſius*, by bringing in foreigners and men, who had been common ſoldiers, others who were even half barbarians, and ſome who were the ſons of manumitted ſlaves[z].

The Triumvirs by introducing many men into the Senate, merely becauſe they were of their party, encreaſed the number of Senators to above a thouſand[a].

[y] Ut conſules populum cohortarentur ad rogationem accipiendam; homines ad 15, Curioni nullum S. C. facienti aſſenſerunt: ex alterâ parte facile CCCC. fuerant. *Cic. Ep. ad Attic.* l. i. ep. 14.

[z] Peregrinis in ſenatum allectis. *Suet. vit. Cæſar.* c. 80. Civitate donatos, & quoſdam e ſemibarbaris Gallorum in Curiam recepit. *Idem*, c. 76.

Milites & Libertinorum filios recepit in Curiam. *Dion. Caſ.* l. xliii. Adeo ut ſumma ſenatorum 900 fuerunt. *Ibid.*

[a] Erant enim ſuper mille & quidem indigniſſimi & poſt necem Cæſaris per gratiam & premium allecti. *Suet. in vit. Aug.* c. 35.

Nam in eum ordinem multi equites ac Plebei indigni bellis civilibus adſciti erant, ita ut ad millenarium numerus ſenatorum perveniſſet. *Dion. Caſ.* l. lii.——In ſenatum à Triumviris adſcripti ſunt multi non modo e ſociis militibuſque & libertinis, ſed etiam ſervi. *Dion. Caſ.* l. xlviii.

Auguſtus garbled the Senate[b], and according to *Suetonius*, reduced them to their ancient number[c]. But what that antient number was, *Suetonius* does not explain. *Dion Caſſius* in his account of this tranſaction, b. liv. is much more particular than *Suetonius*, and explains the antient number to mean three hundred. But in the fact of the reduction to that number, *Suetonius* and *Dion Caſſius* differ widely: for whereas *Suetonius* ſays abſolutely, that *Auguſtus* reduced the Senators to their ancient number; *Dion Caſſius* only relates, that *Auguſtus* had a mind to reduce them to their ancient number of three hundred, but finding he could not perfect that ſcheme without diſobliging too many people by turning them out of the Senate, he was forced to permit ſix hundred to remain there[d].

From this chaos of quotations, extracted out of writers, whoſe authorities are moſt reſpected, and from the different manner, in which different authors

[b] Auguſtus denuo examen ſenatus inſtituit, quibuſdamque depoſitis alios ſubrogavit. *Dion. Caſ.* l. liv.

[c] Senatorum affluentem numerum deformi & incondita turba, ad modum priſtinum & ſplendorem redegit. *Suet. vit. Aug.* c. 35.

[d] Statuerat quidem trecentos tantum ſecundum antiquam conſuetudinem conſtituere, abunde contentum ſe eſſe debere cenſens, ſi tot dignos ſenatoriâ majeſtate reperiiſſet; ſed omnibus hoc pariter ægre ferentibus, ſexcentos ſenatores delegit. *Dion. Caſſius*, l. liv.

relate the ſame tranſactions, you will find why I thought there was ſo little certainty to be come at, with regard either to the manner of filling up the Roman Senate at different periods, from its firſt inſtitution to the time of the Emperors; or to the number, of which it conſiſted, whether limited or unlimited, during the firſt four hundred years after the eſtabliſhment of the Conſular government.

Many of the authors I have cited are, you ſee, in their accounts of theſe circumſtances quite inconſiſtent with one another, and ſome of them as inconſiſtent even with themſelves.

But as, in drawing up this paper, I have examined and conſidered theſe points much more minutely, than I had ever done before; ſo in another Letter, I ſhall do what I will not tire you with doing at preſent, that is, I will give you my opinion on theſe particulars, from conjecture, and what I think probability, though at the ſame time I own it is impoſſible to frame any uniform ſyſtem on theſe ſubjects, that may not be objected to, under the authority of ſome great author.

I will make no excuſe for writing to a man of your taſte and learning, in ſo looſe and inaccurate a manner: you will remember, I hope, that the way of life I am in, will not allow either of the exactneſs or method, with which people may and ought to write,

who have much leiſure, or at leaſt no other buſineſs. Nor is it requiſite for one who writes to confeſs his ignorance, which is my caſe, to be as correct as one who writes to ſhew his learning: ſince many allowances may ſurely be made to thoſe, who aſk information, that might very reaſonably be denied to thoſe, who pretend to give it.

I muſt deſire you too, to carry in your mind, whilſt you are reading this Letter, that it is dated from a Palace, and written by one, who, between the buſineſs of Parliament, and the attendance of a Court, can only now and then ſnatch an hour from theſe alternate avocations, and is forced diſjointedly to put things together, in the confuſed manner they occur, without having time to range them in order, or even to ſee the errors, much leſs to correct them.

I am, &c.

LETTER IV.

Lord Hervey to Dr. Middleton,

CONTAINING

A conjectural Syſtem, to reconcile the Difficulties ſtated in the foregoing.

LETTER IV.

Lord Hervey to Dr. Middleton.

SIR, *Kenſington, June* 14, 1735.

IT may ſeem very arrogant and preſuming in me to pretend to ſettle any point of Hiſtory, that has been ſo long undecided in the learned world, as the different manner, in different ages, of ſupplying the vacancies in the Roman Senate. But it is impoſſible for any body to have examined this ſubject by the lights of every author, who has incidentally touched it (for none have directly treated it), without forming ſome ſyſtem to adjuſt all the ſeeming contradictions in claſſical tradition on this Chapter. I ſhall therefore

give you my thoughts upon it, not as a rule, which I propoſe to guide your opinion, but as a conjecture, which I ſubmit to your correction.

Nor will I, in this Letter, meddle with any particulars relating to the Roman Senate, except thoſe, which are naturally blended with theſe two conſiderations, which are, the number, of which at different periods it conſiſted; and the manner, in which at different periods it was ſupplied.

I muſt premiſe too, that with regard to every thing that paſſed in *Rome*, previous to the taking of the city by the *Gauls*, *Livy* himſelf, at the opening his ſixth Book, confeſſes, all theſe tranſactions were but obſcurely delivered down even to the authors of his time, and imputes this misfortune to two cauſes; firſt, the ſmall uſe that was made of Letters in the earlier days of the Roman State; and next, to the greateſt part, even of thoſe few records, that were made, having been loſt, when the city was burned by the *Gauls*[a].

That

[a] Quæ ab conditâ urbe Româ ad captam eandem urbem, Romani ſub Regibus primum, Conſulibus deinde, ac Dictatoribus, Decemviriſque, ac tribunis Conſularibus geſſere, foris bella, domi ſeditiones, quinque libris expoſui, res quum vetuſtate nimiâ obſcuras, veluti quæ magno ex intervallo loci vix cernuntur: tum quod & raræ per eadem tempora literæ fuere, una cuſtodia fidelis memoriæ rerum geſtarum; & quod

That the firſt inſtitution of the Senate was made by *Romulus* however is indiſputable, and according to *Plutarch*, *Velleius Paterculus*, *Juſtin*, *Eutropius*, *Dionyſius* of *Halicarnaſſus*, and *Livy*, immediately after the foundation of the city [b]: when *Tacitus* ſays, every thing was done by no other rule, than his pleaſure; and which we find confirmed by the general tenor of all authors, as well as by the particular teſtimony of *Pomponius* in his ſecond Book *De origine juris* [c].

That the Senate conſiſted at firſt of a hundred members only, is univerſally agreed by the ſame authors; nor was the Senate, at its firſt eſtabliſhment (notwithſtanding the judicial and legiſlative power it afterwards acquired), any more than the King's council. In this light not only *Feſtus* [d], *Eutropius* [e],

& quod etiam ſi quæ in commentariis Pontificum aliiſque publicis privatiſque erant monumentis; incenſâ urbe pleraque interiere. *Liv.* l. vi. c. 1.

[b] Plutarch in his Life of Romulus. *Vell. Pat.* l. i. c. 8. *Juſtin.* l. iv. c. 3. *Eutrop.* l. i. c. 2. *Dionyſ.* l. ii. c. 12. *Liv.* l. i. c. 8.

[c] Nobis Romulus ut libitum imperitaverat. *Tacit. Annal.* l. iii. c. 26.

Initio civitatis noſtræ populus ſine certa lege, ſine jure certo primum agere inſtituit: omniaque manu a regibus gubernabantur. *Pomponius*, l. ii. *de origine juris.*

[d] Romulus elegit centum, quorum conſilio Rempublicam adminiſtraret. *Feſtus*, l. xvii.

[e] Centum ex ſenioribus elegit, quorum conſilio omnia ageret. *Eutrop.* l. i. c. 2.

and *Livy*[f], repreſent the Senate, but even *Dionyſius* himſelf[g]. It is therefore highly probable, that each member of this council was merely, as *Livy* and *Plutarch* relate, the choice of the King, and not, as *Dionyſius* reports, elected by the people. Neither is there the leaſt ground to imagine, from any author whatever, except *Dionyſius*, that during the whole regal government, the people had directly, or indirectly, actually, or virtually, any ſhare or concern at all in the choice of the Senators.

Livy expreſsly ſays, they had not, in the ſpeech of the Tribun *Canuleius*[h], quoted in my former Letter; and what *Cicero* ſays in his Oration for *Sextius*[i], will admit of no other interpretation. *Feſtus* likewiſe ſays, "that the Kings choſe the Senators, and garbled the "Senate juſt as they thought fit[k]."

[f] Quum jam virium haud peniteret, Conſilium deinde viribus parat: centum creat ſenatores, ſive quia is numerus ſatis erat; ſive quia ſoli centum erant, qui creari patres poſſent. *Liv.* l. i. c. 8.

[g] Hic centum homines electos, appellatoſque Patres, inſtar habuit conſilii publici. *Dionyſ.*

[h] Aut ab regibus lecti, aut poſt reges exactos, juſſu populi. *Liv.* l. iv. c. 4.

[i] Majores noſtri cum regum poteſtatem, &c. *Cic. pro Sext.*

[k] Reges ſibi legebant ſublegebantque quos in conſilio publico haberent. *Feſtus, in voce* Præteriti.

But

But that, which as ſtrongly as any other circumſtance refutes this account of *Dionyſius*, with regard to the firſt hundred Senators having been elected by the people, is, as I obſerved in my former Letter, that the *Tribes* and the *Curiæ*, by whom this election is ſuppoſed to have been made, were not themſelves inſtituted, according to the teſtimony of all other Hiſtorians, till many years after the eſtabliſhment of thoſe very Senators, whom *Dionyſius* ſuppoſes them to have choſen. This miſtake of *Dionyſius* is taken notice of by *Grævius*.

After the peace with the *Sabins*, when *Tatius* their King was admitted to reign, jointly with *Romulus*, over the united Kingdoms, I think it is natural to imagine, conſidering the *Sabins* were at that time, in every other part of the State, veſted with the ſame privileges which the *Romans* enjoyed [1], that a hundred *Sabin* Senators were then added to the Senate, as *Plutarch*, and *Dionyſius*, both of them relate: more eſpecially, ſince the latter, in giving an account of this augmentation of the Senate, by the admiſſion of

[1] Ut Romulus & Tatius eſſent Romanorum reges pari poteſtate & pari honore fruentes, ut Romani & Sabini communi appellatione comprehenſi, à Tatii patriâ, Quirites vocarentur, & qui de Sabinis vellent Romæ degerent, & communicatis utrinque ſacris in Tribus & Curias diſtribuerentur. *Dionyſ.* l. ii. c. 47.—*Plutarch. in vit. Romuli.*

the *Sabins*, ſays, b. ii. c. 47. "that almoſt all the "Roman Hiſtorians agree there was an increaſe of the "Senate then made, by an admiſſion of *Sabins*, "though ſome few authors differ about the number, "and ſpeak of but fifty, whilſt the generality ſay a "hundred [m]."

Livy, I grant, does not confirm this fact in relating the tranſactions of this coalition, but on the contrary, does, juſt after, ſay one or two things, that ſeem, as I obſerved in my former Letter, to jar with this account: yet in a more advanced part of his Hiſtory (that is, in the ſpeech of the Tribun *Canuleius*, who ſays moſt of the Senators came from *Sabins* and *Albans* [n]), *Livy* himſelf ſeems to allude to his augmentation, though he does not record it in its proper place.

Upon the deſtruction of *Alba*, the heads of the moſt conſiderable *Alban* families were introduced by *Tullus*

[m] Atque in his quidem fere omnes Hiſtoriæ Romanæ ſcriptores conſentiunt; ſed pauci quidem de numero adſcriptorum ſenatorum variant, non enim centum, ſed quinquaginta, in ſenatum allectos fuiſſe aſſerunt. *Dionyſ.* l. ii. c. 47.

[n] Quid? hoc ſi polluit nobilitatem iſtam veſtram, quam plerique oriundi ex Albanis & Sabinis, non genere nec ſanguine, ſed per cooptationem in patres habetis, aut ab regibus lecti, aut, &c. *Liv.* l. iv. c. 5.

Hoſtilius into the Senate. *Livy* and *Dionyſius* [o] are both very particular in their account of this tranſaction; but diſagree a little in the number and the names of the families, which both of them enumerate. I imagine theſe *Albans* were brought into the Senate, not to increaſe the number beyond what it had formerly been, at the time when the hundred *Sabins* were added, but to ſupply the places of thoſe, who had died ſince that time: and my reaſon for believing ſo is, that, when a hundred Plebeians were brought into the Senate afterward by *Tarquinius Priſcus*, *Dionyſius*, in relating that fact, ſays, "that on this "augmentation made by *Tarquin*, the Senate firſt conſiſted "of three hundred, having till that day never exceeded "two hundred [p]." Which account, if credited, is a plain proof, that the Senate having conſiſted of two hundred, when the *Sabins* were added, it was only filled up again to that number, when the *Albans* were admitted.

The addition of a hundred Senators made by *Tarquin* the Elder, which firſt increaſed their complement to three hundred, is mentioned almoſt by every Hiſtorian,

[o] *Liv.* l. i. c. 29.—*Dionyſ. Hal.* l. iii.

[p] Et tunc primum Populus Romanus trecentos ſenatores habuit, qui ducenti tantum ad eam uſque diem fuerant. *Dionyſ.* l. iii. c. 67.

who

who writes of theſe times; and all of them agree, that every one of theſe hundred was a Plebeian. Nor does even *Dionyſius*, who ſeems as tenacious as he is ſingular in his elective ſyſtem, pretend that theſe hundred Senators were otherwiſe eſtabliſhed, than by the ſole power and arbitrary nomination of *Tarquin*[q].

This was the laſt alteration made in the Senate, as to its number, under the Kings: which, according to my opinion, you ſee, firſt conſiſted of one hundred, then of two, and then of three hundred. The firſt inſtitution, every augmentation, and every ſupply on vacancies, you find too, I ſuppoſe to have depended entirely on the will and authority of the Kings; and I am warranted in this opinion not only by the more modern authority of *Sigonius*, but by the expreſs words of *Feſtus*[r].

[q] Favorem plebis ſibi conciliare ſtudens, quem admodum ſuperiores reges fecerant, hoc beneficio eam ſibi devinxit: ſelectos ex omni plebeiorum numero centum viros, in patriciorum ordinem retulit, & in ſenatorum numero poſuit. *Dionyſ.* l. iii. c. 67.

[r] Primum cum Reſpublica in poteſtate regum fuit, omnia regum arbitrio adminiſtrata ſunt. *Sigonius*, l. i. c. 2. *de magiſtratibus Rom.*

Præteriti ſenatores quondam in opprobrio non erant, quod ut reges ſibi legebant ſublegebantque quos in conſilio publico haberent. *Feſtus*, *in voce* Præteriti.

Nor

Nor do I, like Monſ. *Vertot*, imagine the reaſon why *Dionyſius* has reported otherwiſe, proceeded from his republican ſpirit, but from what every body who reads this Hiſtorian, muſt find in his manner of deſcribing every inſtitution, law, or cuſtom, among the *Romans*; which is, an affectation of tracing its origin from ſome ſimilar practice in the *Grecian* States, in order, from his partiality to that country, to give *Greece* the honour of having furniſhed the ſketch of every plan, on which the Roman government was framed, and the Roman greatneſs raiſed: but this author, like many others, who endeavour to bring every thing to one point, whilſt in general perhaps his obſervation would be true, wreſts many particulars into a falſe repreſentation, in order to make them tally with his original hypotheſis, and that inviolable ſyſtem, which he has firſt laid down. A manner of writing and reflecting, that muſt draw whoever uſes it into many errors, ſince no bodies of men, any more than any particular men, ever act ſo conſiſtently and uniformly, as to admit of all their actions being reduced to one principle.

Soon after the expulſion of *Tarquin*, and the eſtabliſhment of the Conſular government, the Senate, which, by many condemnations to death, or exile, the laſt King had reduced to leſs than half its complement, was filled up to its former number of three

hundred[s]; this ſupply according to every Hiſtorian was made out of the Plebeians[t]: and in all probability by the ſole power of the Conſuls, ſince no author relates otherwiſe, and all authors agree[v], that the Conſular power at firſt differed from the Regal power in no particulars, but that of being annual, inſtead of perpetual, and divided between two perſons, inſtead of being veſted in a ſingle one[u]. *Tully* calls the Conſular power the Royal power[w]: and *Livy* ſays, "the "firſt Conſuls had all the enſigns and all the privileges "of Royalty[x]."

Till

[s] P. Valerius Conſul, propter inopiam Patriciorum, ex plebe allegit in numerum ſenatorum 164, ut expleret numerum trecentorum. *Feſtus.*

Cædibus regis diminutum patrum numerum, ad trecentorum ſummam explevit. *Liv.* l. ii. c. 2.

Senatum expleverunt uſque ad trecentorum numerum. *Dionyſ.* l. v. c. 13.

[t] In hoc tamen omnes conſentiunt, ex plebe novos ſenatores eſſe allectos. *Manutius.*

[v] Exactis autem regibus, Conſules duo creati ſunt, in omnibus rebus, pari cum regibus poteſtate atque imperio, præterquam quod illi perpetui, hi annui, illi unus, hi duo erant. *Sigonius*, l. i.

[u] Ex perpetuo annuum placuit, ex ſingulari duplex, ne poteſtas ſolitudine vel mora corrumperetur; conſuleſque appellavit pro regibus. *Florus de mutatione Reip.*

[w] Regium imperium—regia poteſtas. *Cic. de Leg.* l. iii. *Idem, de petitione conſulatus.*

[x] Libertatis autem originem inde magis quia annuum imperium conſulare factum eſt, quam quod diminutum quicquam ſit ex regia poteſtate

Till the time therefore that the Plebeians obtained the privilege of chuſing their annual magiſtrates out of their own body, there is no reaſon to believe, that the admiſſion of new Senators in any manner depended on the votes of the people.

On that paſſage in the Oration of *Cicero* for *Sextius*, which, I think, gives the moſt light into this queſtion, I build this opinion[y]: and wherever that author ſpeaks clearly with regard to any of the antient laws and cuſtoms of *Rome*, I believe every body will agree he is the beſt authority one can quote. *Feſtus* corroborates this aſſertion, when he ſays, "the Kings, and after "them the Conſuls, and then the military Tribuns "with Conſular authority, had the ſole power of "making Senators at their pleaſure[z]."

Till the time of the Cenſors then, there is not the leaſt reaſon to imagine, that the people had any hand

teſtate numeres. Omnia jura, omnia inſignia, primi conſules tenuere. *Liv.* l. ii. c. 1. Vid. *Eutrop.* l. i. c. 9.

[y] Majores noſtri, cum regum poteſtatem non tuliſſent, ita magiſtratus annuos creaverunt, ut conſilium ſenatus Reipublicæ præponerent ſempiternum, deligerentur autem in id conſilium ab univerſo populo, aditusque in illum ſummum ordinem omnium civium induſtriæ ac virtuti pateret. *Cic. Orat. pro Sext.* c. 65.

[z] Ut reges ſibi legebant ſublegebantque quos in conſilio publico haberent, ita poſt exactos eos, Conſules quoque & tribuni militum conſulari poteſtate, conjunctiſſimos ſibi quoſque patriciorum & deinde plebeiorum legebant. *Feſtus, de ſignif. Verb.* l. xvii.

in promoting any man to the Senatorial rank. How far the people at that time contributed to it, will be afterwards conſidered in its proper place.

I cannot help here, obſerving, that, in my opinion, one of the greateſt changes that was ever made in the Roman conſtitution was at this period, when the Ariſtocratic part of the government was diminiſhed, and the Democratic part of it ſo much increaſed. For when the people obtained the right of chuſing annual magiſtrates out of their own body, thoſe magiſtrates having a right to ſit and vote in the Senate during their magiſtracy, and a ſort of claim to being enrolled afterwards by the Cenſors in the liſt of Senators; it quite inverted the manner, in which the Senate was before ſupplied, and the public magiſtrates before created. For whereas formerly the Senate was filled up out of the Nobles, and the annual magiſtrates choſen out of the Senate; the people now choſe the annual magiſtrates, and the Senate was filled up out of that claſs. So that after this period, the new members of that great Aſſembly, as *Cicero* and *Livy* both obſerve, obtained the Senatorial dignity, virtually, by the choice of the people.

This privilege of chuſing the annual magiſtrates remained in the people from the time they firſt obtained

tained it, till the reign of *Tiberius*, when *Tacitus* and *Dion Caſſius* both tell us, that this privilege was firſt transferred from the people to the Senate[a]. The *Comitia* for the choice of magiſtrates were reſtored again to the people by *Caligula*, but for a ſhort time, and they never exiſted under any of his ſucceſſors[b].

From the time then that the people were allowed to chuſe the annual magiſtrates out of their own Body, till the time the Commonwealth fell into confuſion, which ended, as confuſion generally does, with a total loſs of liberty; the only difficulty in accounting for the filling up the Senate, is to reconcile the right of the annual magiſtrates to enter the Senate, with the power of the Cenſors. And this, I think, may be done by diſtinguiſhing between "a right to vote in the Senate," and "being a Senator," which were two different privileges, and quite diſtinct honours. The firſt was

[a] Tum primum è campo comitia ad patres tranſlata ſunt. *Tacit. Annal.* l. i. Vid. *Dion. Caſ.* l. liv.

[b] Comitia quoque Caligula populo plebique reddidit, abrogatis Tiberii eâ de re conſtitutionibus. *Dion. Caſ.* l. lix.

Tentavit, comitiorum more revocato, ſuffragia populo reddere. *Sueton. in vitâ Caligulæ*, c. 16.

Domitium autem Collegam Caius ipſe ſibi re, verbo populus elegit: reddiderat enim comitiorum jus populo, quum jam longo tempore nihil liberè decreviſſent.—Et ipſe rurſùm Caius Comitia ſuſtulit. *Dion. Caſ.* l. lix.

obtained

obtained by virtue of exerciſing any public office, from the Quæſtorſhip to the Conſulſhip; and was conſequently conveyed by the people; whereas the laſt was a dignity conferrable only by the Cenſors[e]. *Feſtus* ſays, "that "thoſe who held any public office in the State, and "by virtue of that office voted in the Senate, were "nevertheleſs no Senators till made ſo by the Cenſors[d]." *Aulus Gellius* ſays the ſame thing, in his Chapter upon the *Pedarii Senatores*[e].

Theſe two claſſes were always diſtinguiſhed even in the Edict, that convoked the Senate; the form of the Edict, as may be ſeen in many writers, being "to "convene the Senators, and all thoſe who had a right "to vote in the Senate[f]."

Nor

[e] Ignarus nondum a cenſoribus in ordinem ſenatorium allectum, quo uno modo his, qui jam honores geſſerant aditus in curiam dabatur. *Valer. Maxim.* l. ii. c. 2.

[d] Ii qui poſt luſtrum conditum ex junioribus magiſtratum ceperunt, & in ſenatu ſententiam dicunt, non vocantur ſenatores antequam in ſenioribus ſunt cenſi. *Feſtus*, l. xvii. *Senatores.*

[e] Nam et curulibus magiſtratibus functi, qui nondum à cenſoribus in ſenatum lecti erant, ſenatores non erant. *Aul. Gell.* l. iii. c. 18.

[f] Et nunc cum ſenatores adeſſe jubentur, additur, quibuſque in ſenatu ſententiam dicere licet. *Feſtus*, l. xvii.

Verba edicti hæc ſunt—ſenatores quibuſque in ſenatu ſententiam dicere licet. *Aul. Gell.* l. iii. c. 18.

P. Cor-

Nor was the difference, according to *Aulus Gellius*, between the voters in the Senate, and the confirmed Senators, ſo uneſſential, as it may at firſt appear: for thoſe, who had only a right to vote in the Senate, and were not enrolled Senators, had no right to ſpeak there, and could only paſs in ſilence to one ſide or the other, when a diviſion was made on the point in debate [g]. Whereas an enrolled Senator had a right, when he gave his vote, "to ſpeak as long as he pleaſed, and "on what he thought fit [h]:" a privilege, which amounted to a power of ſtopping all proceedings for that day, and was often ſo uſed [i].

Cato,

P. Cornelius edixit, qui ſenatores eſſent, quibuſque in ſenatu ſententiam dicere licet, ne quis eorum ab urbe abiret. *Liv.* l. xxiii.

Conſules edixerunt, quoties ſenatum vocaſſent, uti ſenatores quibuſque in ſenatu ſententiam dicere liceret, ad portam Capenam convenirent. *Liv.* l. xxiii.

[g] Qui nondum a cenſoribus in ſenatum lecti erant, ſenatores non erant, & quia in poſtremis ſcripti erant, non rogabantur ſententias, ſed quas principes dixerant, in eas diſcedebant. Hoc ſignificabat edictum, quo nunc quoque conſules quum ſenatores in curiam vocant, ſervandæ conſuetudinis tralatitio utuntur. Verba edicti, &c. ut ſup. *Aul. Gell.* l. iii c. 18.

Pedarius [ſenator] appellatur, quia tacitus tranſeundo ad eum cujus ſententiam probat, quid ſentiat, indicat. *Feſtus.*—Vid. *Cic. Att.* i. 19.

[h] Erat enim jus ſenatori ut ſententiam rogatus, diceret ante quicquid vellet alii rei & quoad vellet. *Aul. Gell.* l. iv. c. 10.

[i] Catone priſtinâ conſuetudine dicendi morâ dies extrahente. *Cæſ. Com. Bell. Civ.* l. 1.

Senatori

Cato, in a famous inſtance, related at length by *Aulus Gellius*, from *Atteius Capito De Officio Senatorio*, exerciſed this power, and ſo incurred the wrath of *Cæſar*, that he was thrown by *Cæſar* into priſon upon it.—The caſe was this:—*Cæſar* being Conſul aſked *Cato* his opinion on an affair, then before the Senate; which affair *Cato* thought detrimental to the Commonwealth, and therefore, in order to prevent its being concluded, reſolved, when his opinion was aſked, to talk till it was night, which of courſe would poſtpone the concluſion of that buſineſs to another day; the Roman Law not allowing any decree to paſs before ſun-riſe, or after ſun-ſet[k]. *Cæſar* perceiving the deſign of *Cato*, and not being able to ſilence him, had him apprehended whilſt he was haranguing, and ſent to priſon; but was obliged afterward to releaſe him[l]. This ſtory is alſo related by *Dion Caſſius* at the beginning of his 38th book.

From

Senatori jus erat, antequam de re propoſita ſuam ſententiam definiret, alia de re quicquid vellet, & quoad vellet dicere: quo factum, ut Senatores id, de quo ageretur perfici nolentes, diem dicendo eximerent. Fecit hoc in bona cauſa ſæpe Pub. Clodius, Ciceronis inimicus; in mala M. Cato, cum uterque cuperet impedire. *Manutius de dicendâ ſententiâ.*

[k] Senatus conſultum ante exorſum aut poſt occaſum ſolem factum, ratum non fuiſſe. *Aul. Gell.* l. xiv. c. 7.

[l] Caius Cæſar conſul M. Catonem ſententiam rogavit; Cato, rem quam conſulebatur, quoniam non utilis Reipub. videbatur, perfici nolebat.

From the ſtory of *Fabius Maximus* and *Craſſus*, related by *Valerius Maximus*, b. ii. c. 2. and quoted in my former Letter, there ſeems to have been another very eſſential difference between a Senator, and a voter in the Senate; for by that ſtory one muſt imagine, that thoſe who were enrolled Senators, had not only the ſole right of debating any queſtion, that came into the Senate, but were like a ſecret Committee, or cabinet council, who previouſly weighed every propoſal that was to be made in a general Senate, and determined whether it ſhould be brought in or not.

As to the power of the Cenſors, it was very great, and very extenſive, as may be ſeen in *Cicero*'s third book *de Legibus*[m], where part of the Law, that conſtitutes their authority, and deſcribes their function,

lebat. Ejus rei gratiâ ducendæ, longâ oratione utebatur, eximebatque dicendo diem. Cæſar conſul viatorem vocavit; eumque, cum finem non faceret, prehendi loquentem & in carcerem duci juſſit. Senatus conſurrexit, & proſequebantur Catonem in carcerem: hac invidia facta Cæſar deſtitit, & mitti Catonem juſſit. *Aul. Gell.* l. iv. c. 10. *ex libro Capitonis.*—Vid. etiam *Dion. Caſ.* l. xxxviii.

[m] Cenſores populi ætates, ſoboles, familias, pecuniaſque cenſento. Urbis templa, vias, aquas, ærarium, vectigalia tuentor. Populique partes in tribus diſtribuunto; exin pecunias, civitates ordines partiuntor; equitum peditumque prolem deſcribunto; cœlibes eſſe prohibento; mores populi regunto; probrum in ſenatu ne relinquunto; bini ſunto; magiſtratum quinquennium habento. *Cic. de Leg.* l. iii.

is recited. This is alſo confirmed by *Livy* [n], and by *Plutarch* in the life of the elder *Cato* and of *Paulus Æmilius* [o].

The power of taking cognizance of the manners of every Roman citizen, was firſt annexed to the Cenſorſhip, when the office itſelf was disjoined from that of the Conſulſhip, in the 311th year of Rome, as may be ſeen in *Livy*, b. iv. c. 8 [p].

But the power of chuſing the new Senators was not transferred from the Conſuls to the Cenſor till near a hundred years afterward, in the Tribunſhip of *Ovinius* [q]: and it was then given to the Cenſors by the people, to revenge the breach of the *Licinian* Law, (which Law ordained that one of the Conſuls ſhould

[n] Ut morum diſciplinæque Romanæ penes eam regimen, ſenatus, equitumque centuriæ, decoris dedecoriſque diſcrimen, ſub ditione ejus magiſtratus, publicorum jus, privatorumque locorum, & vectigalia populi Romani, ſub nutu atque arbitrio eſſent. *Liv.* l. iv. c. 8.

[o] Vid. *Plutarch. in vitâ Catonis ſuperioris & Pauli Æmilii.*

[p] Idem hic annus [U. C. 311.] cenſuræ initium fuit, rei a parva origine ortæ: quæ deinde tanto incremento aucta eſt, ut, &c. ut ſup. *Liv.* l. iv. c. 8.

[q] Poſt exactus reges, conſules quoque & tribuni militum conſulari poteſtate conjunctiſſimos ſibi quoſque patriciorum & deinde plebeiorum legebant, donec Ovinia tribunitia intervenit, quâ ſancitum eſt, ut cenſores ex omni ordine, &c. *Feſt. de voce* Præteriti.

always

always be choſen out of the Plebeians[r],) for both the Conſuls being that year Patricians, and one of the Cenſors that year, for the firſt time, being a Plebeian, the Tribun *Ovinius* put the people upon this expedient to do themſelves juſtice and mortify the nobility.—See *Feſtus*.

After the ſecond Punick war, there was a Law paſſed, that prevented any man from being choſen Cenſor, who had not been before elected Conſul.

The Cenſors had all the badges of the ſovereign power of the Conſulſhip, except the Lictors; but they had, in one particular, a much greater authority, than the Conſuls ever poſſeſſed, which was, the power of expelling any Senator from the Senate by only omitting to call over his name, when they recited the

[r] Tribunis negantibus paſſuros comitia haberi, ni ſecundum Liciniam legem haberentur; Dictatore obſtinato tollere potius totum e Republica conſulatum, quam promiſcuum patribus ac plebi facere. *Liv.* l. vii. c. 21.

Interreges—interpoſiti obtinuere—mitiore jam plebe—ut ambo Patricii Conſules crearentur. *Liv.* vii. 22.

Cæterum quum cenſoribus creandis indicta comitia eſſent; profeſſus ſe peterè cenſuram C. Martius Rutilus, qui primus dictator de plebe fuerat, concordiam ordinum turbavit: quod videbatur quidem tempore alieno feciſſe: quia ambo tum forte patricii conſules erant, qui rationem ejus ſe habituros negabant: ſed & ipſe conſtantiâ inceptum obtinuit;—& cenſuram quoque in partem vocari plebs volebat. *Ibid.*

Illud porro ſacerdotum omnium proprium fuit, ut tam ex plebeiis quam ex patriciis fierent. *Sigonius de Lege Liciniâ.*

roll: for according both to *Lipſius* [s], and *Sigonius* [t], the moſt learned writer extant on the Roman laws and cuſtoms, "He, whom the Cenſors named, when they "called over the roll, was of courſe a Senator, and "he, whom they omitted to name, ceaſed to be ſuch." *Sigonius* adds too on this occaſion, "that every Roman "Hiſtory abounds with examples of this kind."

The Cenſors had likewiſe, conſequential to their reforming authority, the power of degrading any Knight, by taking away the golden ring, and the horſe allowed him by the public [v]: they could alſo degrade a Commoner, by putting him in a lower Tribe [u]; or

[s] *Senatu ejiccre* non aliud erat, quam initio cenſuræ, cum ſenatum legerent, nomen illius aut illius ſenatoris in recitando præterire; quo velut tacito indicio cenſebantur loco moti, nec nomen eorum ultra in albo ſenatorum. *Juſt. Lipſius de Mag. Pop. Rom.* c. 18.

[t] Ita ut quem in recitando ſenatu nominaſſent, is lectus in ſenatum: quem præteriiſſent idem ſenatu motus putaretur. Exemplorum autem plena eſt omnis hiſtoria. *Sigonius de Ant. Jure Civ. Rom.* l. ii.

[v] Equum vendere juſſit. *Liv.* l. xxix. c. 37.

Item ſi quis eques Romanus equum habere gracilentum aut parum nitidum viſus erat, impolitiæ notabatur. *Aul. Gel.* l. iv. c. 12.

Equites in publicâ recenſione ad Cenſorum ſellas venire ſoliti ſunt, equum manu ducentes: quos ſi cenſores probarent, præterire & traducere equum ſolemni verbo jubebant; ſin aliter, equum adimebant, vendi jubebant. *Juſt. Lipſ. de Mag. Pop. Rom.* c. 18.

[u] Tribu movere: id eſt, Livio interprete, l. xlv. mutare jubebant Tribum, & ex honeſtâ ruſticâque in minus honeſtam ſive urbanam transferebant. *Juſt. Lipſ. de Mag. Pub. Rom.* c. 18.

impoſe

impoſe a fine on any citizen; or take away his vote, and put him upon the foot of the inhabitants of *Cære*, who had the title of citizens of *Rome*, but not the privileges; as is fully explained by *Aulus Gellius* [w], and to which *Horace* alludes in the two verſes at the end of his ep. 6. b. i.

Quid deceat, quid non, obliti; Cerite cerâ
Digni; remigium vitioſum Ithacenſis Ulyſſei.
L. i. Ep. vi. v. 62, 63.

The ſurvey of public and private buildings was within their juriſdiction, which gave them alſo authority over the *Ædiles*; the tributes, taxes, revenues, and ſubſidies of the State were all likewiſe liable to their inſpection, and ſubject to their controul; as appears, both from *Livy*, b. iv. c. 8. and from *Tully*, *de Legibus*, as above recited [x].

[w] In Ceritum tabulas referre & ærarium facere.

Primos autem municipes ſine ſuffragii jure Cærites eſſe factos accepimus: conceſſumque illis ut civitatis Romanæ honorem quidem caperent, ſed negotiis tamen atque oneribus vacarent. Hinc tabulæ Cærites appellatæ, in quas cenſores referri jubebant, quos ignominiæ cauſâ ſuffragiis privabant. *Aul. Gell.* l. xvi. c. 13.

[x] Publicorum jus, privatorumque locorum, & vectigalia populi Romani ſub nutu atque arbitrio eſſent. *Liv.* l. iv. c. 8. Vid. *Cic.* ut ſup.

Their authority was ſo extenſive, and ſo formidable, that though at firſt their office was given for five years; yet in 321 U. C. by the *Æmilian* Law, the exerciſe of their authority was reduced to one year and a half[y]; though new Cenſors were ſtill choſen but once in five years; ſo that for three years and a half in every five years, the office was dormant. No man could be Cenſor above once; and there were always two at a time: for if one Cenſor died, the office of the other ceaſed of courſe, as a ſole Cenſor was not allowed, from the authority being too great to be truſted to one; and ſuperſtition hindered them from chuſing a new Cenſor in the dead Cenſor's place, becauſe the firſt time *that* had been done, the city was taken, ſacked, and burned by the Gauls within a year after[z].

The

[y] Circum actis decem & octo menſibus, quod Æmiliâ lege finitum cenſuræ ſpatium temporis erat. *Liv.* l. ix. c. 33.

Quum identidem legem Æmiliam recitaret, auctoremque ejus Mamercum Æmilium dictatorem laudibus ferret, qui quinquennalem ante cenſuram & longinquitate poteſtatem dominantem, intra ſex menſium & anni coegiſſet ſpatium. *Liv.* l. ix. c. 33.

Concione itaque advocatâ Æmilius dictator ait,—alios magiſtratus annuos eſſe, quinquennalem cenſuram; grave eſſe iiſdem per tot annos magnâ parte vitæ obnoxios vivere, ſe legem laturum ne plus quam annua ac ſemeſtris cenſura eſſet—Conſenſu ingenti populi legem poſtero die pertulit. *Liv.* l. iv. c. 24.

[z] C. Julius Cenſor deceſſit, in ejus locum M. Cornelius ſuffectus, quæ res poſtea religioni fuit: quia eo luſtro Roma eſt capta; nec deinde unquam in demortui locum Cenſor ſufficitur. *Liv.* l. 5. c. 31.

An

The eighteenth book of *Livy* is loſt, but from the Epitome of it by *Florus*, it appears, that the Cenſors *M. Sempronius* and *Valerius Maximus* turned thirteen Senators at once out of the Senate [a].

The Cenſor *Appius Claudius*, in the year of Rome four hundred and forty-one, made ſuch infamous and ſuch arbitrary promotions in the Senate, by bringing in the grandſons of ſlaves, in preference to men of rank and merit, that his collegue abdicated upon it [b]; and the ſubſequent year this election was ſet aſide [c]. This promotion in the Senate by *Appius Claudius*, the Cenſor, is recorded alſo in *Suetonius*, in the life of

An Collegam ſubrogabis, quem ne in demortui quidem locum ſubrogari fas eſt. *Liv.* l. ix. c. 34.

Hoc quoque proprium erat cenſorum ut in demortui locum alius non ſubrogaretur, ſed uno mortuo, alius ſe ſtatim magiſtratu abdicari cogebatur. *Nico. Gracchii de Comit. Rom.* l. i.

Omnes cenſores poſt mortem collegæ ſe magiſtratu abdicarunt. *Liv.* l. ix. c. 34.

[a] M. Sempronius & Valerius Maximus cenſores, cum ſenatum legerent, tredecim ſenatu moverunt. *Flor. Epit. Liv.* l. xviii.

[b] Infamem atque invidioſam ſenatus lectionem. L. ix. c. 29.

Deformatum ordinem pravâ lectione ſenatus quâ potiores aliquot lectis preteriti eſſent. *Idem.*

Sine recti pravique diſcrimine ad gratiam & libidinem facta. *Idem.*

Libertinorum filios in ſenatu legit. *Flor. Ep.* l. xxix.

[c] Conſules qui eum annum ſecuti ſunt negaverunt ſe eam lectionem obſervaturos, & ſenatum extemplo citaverunt eo ordine, qui ante cenſores App. Claud. & C. Plautium fuerat. *Liv.* l. ix. c. 30.

Claudius [d]. I mention this tranſaction, becauſe I think it a proof of the great power of the Cenſors, as well as an inſtance of the great abuſe of it; and becauſe I think it ſhews, that when the annual magiſtrates were not ſufficient to ſupply the vacancies in the Senate, the Cenſors choſe whom they pleaſed. And that the annual magiſtrates were ſeldom enough to ſupply the vacancies, may eaſily be concluded, when one conſiders how few they were, and how many vacancies muſt be made in ſo large a body as three hundred men, by natural deaths, the chance of perpetual war [e], and the purgations made by the reforming authority of the Cenſors. During the ſecond Punick war, there were in three years ſpace one hundred and ſeventy vacancies in the Senate by deaths [f].

The filling up the Senate then from the *Ovinian* Tribunſhip till the time of the *Gracchi*, I think, depended intirely on the Cenſors; for though I allow the annual magiſtrates at the expiration of their office had a ſort of claim and pretenſion to be put on the roll

[d] Appium Cæcum generis ſui proauctorem cenſorem libertinorum filios in ſenatum allegiſſe docuit. *Sueton. in vit. Claud.* c. 24.

[e] Quanquam a conditâ urbe nunquam bella ceſſaſſent. *Eutrop.* l. ii. c. 10. U. C. 472.

[f] Ita centum ſeptuaginta ſeptem in ſenatum lectis. *Liv.* l. xxiii. c. 23.

of

of Senators, by the Cenſors; yet as the Cenſors, under the pretence of reformation, had an uncontrollable power to remove Senators already enrolled, ſo on the ſame pretence, they could, if they pleaſed, refuſe to enroll, and even without giving any reaſon; ſince their manner both of expelling or admitting Senators was merely by omitting or inſerting a name, in the ceremony of calling over the roll. This, as before mentioned, *Sigonius* obſerves, and at the ſame time deſcribes the power of the Cenſors ſo great, with regard to the admiſſion of new Senators, that after enumerating all the qualifications neceſſary to enter the Senate, he ſays, "no pretenſion or qualification, nor "the exerciſe of any magiſtracy whatever, was ſuf-"ficient to conſtitute a man a Senator, without his "being choſen by the Cenſors [g]."

Valerius Maximus alſo confirms this opinion, when he ſays, "the being elected by the Cenſors was the "ſole means of admiſſion into the Senate, even for "thoſe, who had been magiſtrates [h]."

[g] Quanquam hæc omnia in aliquo conſtarent, non tamen idcirco neceſſario ſenatorem eum fuiſſe, opus enim fuit lectione cenſoris, uſque adeo, ut ne qui magiſtratus quidem geſſiſſent, niſi a cenſoribus lecti eſſent, ſenatores eſſe poſſent. *Sigon.*

[h] Ignarus nondum a cenſoribus in ordinem ſenatorum electum, quo uno modo etiam iis, qui jam honores geſſerant, aditus in curiam dabatur. *Val. Max.* l. ii. c. 2.

Though the Cenſorſhip therefore, at its original inſtitution by *Servius Tullius* the ſixth King of *Rome*, was nothing more than the office of numbering the people, and taking the valuation of their eſtates, and an office annexed firſt to the Royal authority, and afterward to the Conſular power [i]; yet when it was detached from the Conſular power, and erected into a ſeparate office, with the power of filling up the Senate annexed; from that time, as the cognizance of the manners of every citizen of *Rome* was alſo in their department [k], I look upon the Cenſors to have been full as abſolute in the city and the civil government, with regard to all promotions and degradations, from the Senate down to the loweſt Tribe, Curia, or Century, as the Conſuls were in the camp and the military government [l]. There is in my opinion no

[i] Cenſum primus inſtituit Servius Tullius, ſextus inter reges: nec magiſtratum aliquem huic rei proprium adhibuit, ſed exercuit ipſe. Itaque regium id munus habitum; iiſque pulſis, conſulare. *Lipſius de Magiſt. Pop. Rom.* c. 18.

[k] Adimebant ergo cenſores quod cuique ordini ſummum eſt: ſenatui curiam; equiti publicum equum; plebeio tribum aut ſuffragium. *Idem.*

[l] Cenſura res a parva origine orta, quæ deinde tanto incremento aucta eſt, ut morum diſciplinæque Romanæ penes eam, regimen, ſenatus, equitumque centuriæ, decoris dedecoriſque diſcrimen, ſub ditione ejus magiſtratûs, publicorum jus, privatorumque locorum, & vectigalia populi Romani, ſub nutu atque arbitrio eſſent. *Liv.* l. iv. c. 8.

other

other judgment to be made of the nature of this office from any account of it in any author. And with regard to the particular power of the Cenſors over the Senate, *Dion Caſſius* tells us, when *Auguſtus* and *Agrippa* turned out and put in whom they pleaſed, they took the name of Cenſors, and thought that title a ſanction for the whole tranſaction [m].

The Emperor *Claudius* alſo, according both to *Suetonius* and *Tacitus*, declared himſelf Cenſor, and as ſuch, cenſured, degraded, and fined men of all ranks juſt as he thought fit [n]. And we find too in *Tacitus*, that the funeral honours decreed him by the Senate were thoſe that belonged to the dignity of Cenſor. *Veſpaſian* and his ſon *Titus* thought the office of Cenſor ſo honourable, that they exerciſed it together, and had

[m] Deinde cenſor collega Agrippa fuit, emendavitque cùm alia quædam, tum ſenatum ordinavit. *Dion. Caſ.* l. lii.

Ex cenſoria autem appellatione in vitam & mores inquirendi, cenſus agendi, in equeſtrem ac ſenatorium ordinem adſcribendi, alioſque ex iis removendi pro ſuo arbitrio licentiam conſequuntur. *Dion. Caſ.* l. liii.

Quod cenſores ſunt, de moribus Romanis judicium faciunt, cenſent populum arbitratu ſuo, legunt in ſenatum & ſenatu movent. *Xiphilini Epit. Dion.* l. liii.

[n] Geſſit & cenſuram intermiſſam diu, ſed hanc quoque inæqualiter varioque & animo & eventu. *Suet. vit. Claud.* l. xvi.

Claudio cenſorium funus decretum. *Tacit. Ann.* l. xiii.

had the title of Cenſor engraved on their coin [n]. *Julius Cæſar* alſo, according to *Dion Caſſius* [p], *Celſus* [q], and *Suetonius*, exerciſed the Cenſorſhip: and from *Dion Caſſius* too we learn, that *Domitian*, to whom *Martial* begins one of his Epigrams with the appellation of Cenſor, bore that title during his whole reign [r].

Before I conclude th's Letter, I muſt ſay one word, as to the number of which the Senate conſiſted, from the time of the firſt Conſuls to the time of the *Gracchian* and *Druſian* ſeditions, which I take to have been limited to three hundred. *Manutius* is of this opinion too [s]: and certain it is, that in no author, except the author of the Book of *Maccabees* [t], it appears to have conſiſted

[n] Claudius munia cenſoria uſurpans theatralem populi laſciviam ſeveris edictis increpuit, &c. *Tacit.* l. xi. c. 13.

[o] Titus triumphavit cum patre, cenſuramque geſſit una. *Suet. in vit. Tit. Veſp.* c. 6.

[p] Etiam decretum fuit, ut cenſor ſolus, idque quamdiu viveret, eſſet. *Dion. Caſſ.* l. xliii.

[q] Celſus in commentariis de vitâ Jul. Cæſ. C. 258.

[r] Cenſor maxime! *Mart. Epig.* l. vi. ep. 4. *in uſum Delph.*

Cenſoris nomen Domitianus per totam ſuam geſſit vitam. *Dion Caſ.* l. liii.

[s] Numerus trecentorum à Priſco Tarquinio conſtitutus, manſit idem uſque ad Sullæ dictaturam. *Manutius de Orig. Senatus.*

[t] Moreover, how they had made for themſelves a ſenate-houſe, wherein three hundred and twenty men ſat in council daily, conſulting alway for the people. 1 *Macc.* ch. viii. v. 15.

of a greater number between theſe two periods. And as the book of *Maccabees* is only apocryphal, I ſhall venture to diſſent from its authority in this point, and am juſtified in doing ſo by the two evident miſtakes made in the following verſe, where it is ſaid that the Romans "committed their government to *one* man every "year, who ruled over all their country, and that "all were obedient to that one, and that there was "neither envy nor emulation amongſt them." Verſ. 16.

Appian, in ſpeaking of the *Druſian* ſedition, ſays, the Senate was then under three hundred[v]. The Epitome of *Florus* on the 60th book of *Livy*, which is loſt, ſays, it conſiſted of that number in the time of *Caius Gracchus*[w]. *Suetonius* ſays, *Auguſtus* reduced them to their former number; and *Dion Caſſius* treating of this tranſaction, b. liv. explains that former number to have been three hundred[x]. In his 37th book too he ſays abſolutely, that the number till that

[v] Quum ſenatores propter crebras ſeditiones non trecentorum explerent numerum. *Appian. de Bell. Civ.* l. i.

[w] Trecenti ſenatores erant. *Flor. Epit. Liv.* l. lx.

[x] Senatorum affluentem numerum ad modum priſtinum redegit. *Suet. Aug.* c. 35.

Statuerat quidem trecentos tantum ſecundum antiquam conſuetudinem conſtituere. *Dion. Caſ.* l. liv.

time,

time, which was when the diſſentions between *Clodius* and *Cicero* commenced, had been limited, though he does not there ſay what that limited number was[x].

Ever after the time of the *Gracchi*, the State was either in ſuch confuſion, or ſuch abſolute ſlavery, that I think there was no regular method at all obſerved in filling up the Senate, or any juſtice in purging it. Whoever had the ſovereign power in his hand, under what title ſoever he ſeized or poſſeſſed it, modelled the Senate by the introduction of new members, or the expulſion of old ones, juſt as he thought fit[y]. *Sylla*, *Cæſar*, the Triumvirs, and afterward the Emperors, acted as arbitrarily in this particular, as in every other. *Dionyſius*, b. ii. c. 11.[z] ſays, at the time of the *Gracchi*, the utmoſt confuſion was introduced into the State, and the cuſtom firſt commenced of Roman citizens

[x] Eodem anno a cenſoribus omnes ii, qui magiſtratus geſſerant, in ordinem ſenatorum ſunt relati, etiam ultra definitum ſenatorum numerum. *Dion. Caſ.* l. xxxvii.

[y] Omnia deinde pro arbitrio eorum, penes quos ſuprema erat poteſtas, acta ſunt. Idem & accipiebat nomen alicujus magiſtratus & deponebat. *Dion. Caſ.* l. xlviii.

[z] Sed ex quo Caius Gracchus tribunitiam poteſtatem adeptus, reipublicæ concordiam perturbavit, non ceſſant ſe mutuo cædere, & ex urbe in exilium ejicere, nec ab ullo nefario ſcelere abſtinent, ut vincant. *Dionyſ.* l. ii. c. 11.

butchering

butchering one another, according as rage or intereſt excited them to ſtrife and contention. The ſame remark is made by *Velleius Paterculus* [a], and *Florus* [b]; but the foundation for this reflection is no where ſo amply deſcribed, or ſo pathetically lamented, as in the exordium to *Appian*'s firſt Book on the civil wars, which is too long to be recited here, but one of the fineſt parts of his Hiſtory [c].

I obſerved in my former Letter, that a monied qualification for a Senator was neceſſary, though I can no where find, when it was firſt inſtituted. The ſum was originally eight hundred thouſand ſeſterces, and increaſed by *Auguſtus* to one million two hundred thouſand. *Seneca* ſays, that a monied qualification diſtinguiſhed all ranks, orders, and degrees in Rome [d]. This *Ovid* alſo complains of [e]: But *Pliny*, the naturaliſt, in the

[a] Hoc initium in urbe Romanæ civilis ſanguinis, gladiorumque impunitatis fuit. Inde jus vi obrutum, potentiorque habitus prior: diſcordiæque civium antea conditionibus ſanari ſolitæ, ferro dijudicatæ, bellaque non cauſis inita ſed prout eorum merces fuit. *Vell. Pater.* l. i. c. 3.

[b] Primam certaminum facem Tiberius Gracchus accendit. *Flor.* l. iii.

[c] Vid. *Appian. de bellis civilibus*, l. i. c. 1.

[d] Senatorum gradum cenſus aſcendere facit; cenſus Romanum equitem a plebe diſcernit. Cenſus in caſtris ordinem promovet; cenſu in foro judex legitur. *Seneca in lib. declamationum 2do.*

[e] Curia pauperibus clauſa eſt; dat cenſus honores,
Inde gravis judex, inde ſeverus eques. *Ovid. Amor.* l. iii.

proem

proem to the 14th Book of his Hiſtory, without explaining when this monied qualification commenced, ſays, it was not of ancient date in the Commonwealth[f].

Dion Caſſius tells us, that it was lowered and increaſed by *Auguſtus*, according to the indigence of the State, juſt after the civil wars, and the proſperity of the ſucceeding times[g]. *Nicolo Grucchio*, in his Treatiſe *de Comitiis Romanis*, after tranſcribing the abovementioned paſſage from *Pliny*, adds, "that he "can ſhew from Hiſtory, that this qualification was "firſt ſettled by *Julius Cæſar*[h]:" I wiſh he would have named the Hiſtory, for I know of none that mentions it.

As to the Senatorial Age, it is unneceſſary to cite examples, when every Latin Hiſtorian is full of them, to prove there was a qualification of Age neceſſary to being a Senator: and hitherto, I think, it has been

[f] Poſteris laxitas mundi & rerum amplitudo damno fuit; poſtquam ſenator cenſu legi cœptus peſſumiere vitæ pretia. *Plin.* l. xiv.

[g] Secundum ea iterum ſenatus cenſura inita eſt: quum enim initio ſenatoribus cenſus eſſet definitus quadringenta ſeſtertia, quoniam multi bellis inteſtinis paternas facultates amiſerant; progreſſu autem temporis ac locupletioribus factis hominibus, is uſque ad decies ſeſtertium auctus fuiſſet. *Dion. Caſ.* l. liv.

Uſque ad duodecies ſeſtertium cenſum auxit. *Id.* l. lv.

[h] Ego a Cæſare dictatore primum factum ex hiſtoriâ confirmo. *Nic. Gruc. de Comitiis Rom.* l. i.

thought

thought quite uncertain, what that Age was. *Sigonius* himſelf " confeſſes he cannot abſolutely ſettle it[i]." But conſidering the annual magiſtrates, at the expiration of their office, were generally elected by the Cenſors into the Senate, and that any man at twenty-ſeven years of age might be made Quæſtor, it is reaſonable to conclude, that at twenty eight he was capable of being made a Senator.

There is one thing relating to the diſpenſation for age made in favour of *Octavius*, when he was admitted into the Senate, that confirms this opinion, and amounts, I think, almoſt to a demonſtration, that the *ætas ſenatoria* was twenty-eight. For when *Octavius* was brought into the Senate in an extraordinary manner, and at an illegal age, the decree which was paſſed to qualify him, in point of age, *Cicero* in his fifth *Philippick* tells us, ran in theſe terms, " that *Octavius* ſhould be in the ſame ſituation, as he would " have been, had he been Quæſtor the year before[k]:" which of courſe I think implies, that had he been regularly Quæſtor the year before, his being made a

[i] At quæ tamen ætas hæc eſſet, nondum me pro certo inveniſſe profiteor. *Sigon. de ant. jure Rom.*

[k] Ita haberi, prout haberi lege liceret, ſi anno ſuperiore Quæſtor fuiſſet. *Cic. Philip.* v.

ſenator this year would be no promotion out of form, with regard to age.

This fact is alſo recorded by *Dion Caſſius*[1]: but the teſtimony of *Cicero* for an occurrence in his own time wants no corroborative evidence to confirm it.

I ſhall now in a few words ſum up what I have delivered in ſo many, that you would not perhaps, without a recapitulation of this kind, be able to extract my meaning.—My opinion with regard to the Roman Senate then is, that during the Regal government, it was as much the prerogative of the Roman Kings to make Senators, as it is of the Engliſh Kings to make Peers. Till the time that the Cenſorſhip was disjoined from the Conſulſhip, the filling up the Senate, I imagine, depended on the Conſuls. And notwithſtanding the claim of the annual magiſtrates, according to my ſyſtem, from the *Ovinian* Tribunſhip in 403 U. C. the abſolute power of making and degrading a Senator was veſted in the Cenſors. Ever after the ſeditions of the *Gracchi*, as I have before obſerved, the ſupplying and garbling the Senate was the province of whoever by violence and uſurpation had got the ſupreme power into his own hands, till the time of the Emperors,

[1] Itaque decretum eſt ut Octavius Cæſar inter Quæſtores eſſet Senator, ita ut reliquos magiſtratus maturius quam legibus permiſſum eſſet, petendi jus haberet. *Dion. Caſ.* l. xlvi.

who

who in ſucceſſion uſurped this branch of power, as well as every other.

As to the number of Senators, they were firſt, one hundred: after the peace with the *Sabins* they were encreaſed to two hundred: by *Tarquin* the elder, to three hundred: and were never more than three hundred, till the time of the *Gracchi*. To what number *Gracchus* or *Sylla* encreaſed them is uncertain. In *Cicero*'s time they were not leſs than four hundred and fifteen, as appears by his Letter to *Atticus*, b. i. ep. 14. *Cæſar*, according to *Appian*, *Dion Caſſius*, and *Suetonius*, encreaſed them to nine hundred; and the Triumvirs, according to the ſame authors, to above a thouſand. *Auguſtus* reduced them again to three hundred, according to *Suetonius*, or to ſix hundred, according to *Dion Caſſius:* what number they conſiſted of afterwards is uncertain.

In examining this queſtion relating to the Senate, you will eaſily ſee, I have been at a good deal of trouble; and if you aſk me to what purpoſe, I can only anſwer like *Montagne*, "Cela m'occupe, cela "m'amuſe." And if that reaſon is not ſufficient to juſtify many things we do and ſay, I fear moſt of our employments and converſations would be terribly abridged, and many of them quite annulled.

 I am, &c.

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LETTER V.

Dr. Middleton to Lord Hervey.

Dr. Middleton to Ford Hetzel.

FELLER A'

LETTER V.

Dr. Middleton to Lord Hervey.

MY LORD, *Cambridge, June 17, 1735.*

THE laſt Poſt brought me the honour of your ſecond Diſſertation on the Roman Senate. I have read it over with much pleaſure, as oft as the interval of a ſingle day will allow; and at more leiſure ſhall conſider it with more attention. Your Lordſhip has run through the whole length of the queſtion, with great diligence and accuracy; has diſtinguiſhed and explained the ſeveral parts of it with great clearneſs, and ſupported your own judgment on each point with great ſtrength of evidence. To collect ſuch a variety of materials, and range them in ſuch order and method,

method, muſt needs, as your Lordſhip intimates, have coſt a great deal of time and trouble, though leſs of both, I dare ſay, to your Lordſhip, than to any man elſe; for had not your great parts much ſhortened your labour of ſtudy, your great ſtation in life could not poſſibly allow the time for it.

As to the queſtion, that your Lordſhip ſtarts at the end, "To what purpoſe all this pains?" I could give a better anſwer, than what your Lordſhip intimates from *Montagne*, *viz.* for the Public Good: this is a purpoſe worthy of your Lordſhip, to apply your learned, as well as political labours to the common benefit, and not only to protect, but even inſtruct the Men of Letters.

I cannot help wiſhing therefore that your Lordſhip would think of printing theſe papers, and make me your corrector. I do not mean of the Copy, for that can only be done by your Lordſhip, but of the Preſs. Your two Diſſertations, in the form of Letters to an anonymous friend, would, in my opinion, be thought to give the beſt and cleareſt account yet extant of the ſtate of the Roman Senate, and the moſt probable ſolution of the many and great difficulties, that perplex the whole inquiry. A work truly becoming an Engliſh Nobleman, or a member of the firſt Senate now in the

World, to write of the nobleſt, that ever was in the World.

But if your Lordſhip would conſent to ſend them abroad in the manner and form, through which they really paſſed, that is, with ſome little thing of mine along with them, I ſhould be proud to bear any part in ſuch company, though it were only that of being confuted by your Lordſhip. For to ſpeak the truth, though your performance much pleaſes me, and will perhaps pleaſe every body elſe, yet I cannot come fully into your Lordſhip's hypotheſis, of giving to the Kings, Conſuls, and Cenſors ſucceſſively, the ſole and abſolute right of nominating the Senators; nor conſent to exclude the brave Commons of *Rome* from a ſhare of power ſo important, of which I find reaſon to think them actually poſſeſſed. I deſign to trouble your Lordſhip ſhortly with the reaſons of my opinion, and ſome remarks on what you have advanced againſt it; which your Lordſhip may make what uſe of you pleaſe, and either refute them in a third Letter, or leave them with thoſe two to the judgment of the public, as an appendix to fill up the collection, of whatever relates to the ſubject.

I am, &c.

LETTER VI.

Lord Hervey to Dr. Middleton.

LETTER VI.

Lord Hervey to Dr. Middleton.

SIR, *Redlynch, June 27, 1735.*

I AM too well pleaſed with the Letter I have already received from you, in anſwer to my laſt on the Roman Senate, not to expect with ſome impatience that, which you tell me you are preparing to follow it. And unuſual as it may ſeem, to propoſe as much pleaſure in receiving correction as applauſe, I can aſſure you with great truth, that your future inſtruction will not be leſs welcome, than your paſt approbation, and that my ears, as courtly as you may think them, will never be leſs open to your reprehenſion, than to your flattery.

As

As to the propoſal you make of printing theſe Letters, it is one I cannot poſſibly give into: not that I pretend to ſuch uncommon modeſty, as to aſſure you, I think them unworthy of the Preſs, conſidering what wretched company they would keep there; but the trade of a Critic is ſo eaſily learned, and the faculty ſo eaſily exerciſed on a point ſo problematical, as that I have treated; that to own fairly to you the weakneſs of my mind, I feel my pride would be more hurt in drawing that train of impertinence unneceſſarily upon myſelf, than I could be pleaſed with any circumſtance attending the publication. Therefore, as other people print to feed their vanity, I abſtain from it, for fear of hurting mine; and whilſt I take a different method from other authors, am free to own I act upon the ſame principle; confeſſing myſelf infected with their weakneſs, though I avoid their error.

I am a ſort of prude in writing, who do not abſtain from the coquetry of publiſhing from an indifference to pleaſing, but for fear of ſhewing too eager a deſire to gain, what I am not ſure of acquiring; and to avoid, at leaſt, the mortification of being neglected by thoſe I court, and cenſured, where I ſhew a deſire to be approved. Which, though a negative ſatisfaction, yet conſidering the certainty of it, I prefer to the

dangerous methods they muſt uſe, who aim at any thing further.

Having ſaid this with regard to the publication of the Letters in your hands, I muſt now diſcover the more common ſpirit of an author, by defending them in the only point, on which you have yet attacked their orthodoxy; and that is, in the too great power you ſeem to think they have allotted to the Cenſors. But as this power, according to my hypotheſis, was only transferred by the cabals of the Tribuns from two Patrician Conſuls to the two Cenſors, one of which, at the time of the transfer, was a Plebeian; and as the power of nominating Senators had already been, indubitably, I think, for above four centuries uninterruptedly the prerogative of thoſe, who were either for life or annually elected into the ſovereignty, there appears to me in this conjecture, were it only conjecture, and unſupported by hiſtorical evidence, nothing incongruous with the reſt of the Roman policy, nor any thing that jars, in the leaſt, with the genius of the Roman government, even in the ages, when it is accounted to have been the moſt free.

The precautions the Romans took to ward againſt the inconveniencies of deſpotic power, after the expulſion of the Kings, did not, in my opinion, conſiſt in

in giving authority to their magiſtrates, hampered by many checks in the exerciſe of that authority, but merely in making that authority temporary; and of courſe, what was called the liberty of *Rome* did not proceed from the city having *no* maſter, but *many* maſters, who were ſo conſtituted, that by a neceſſary rotation, every citizen had a chance, in his turn, and according to his merit, to be promoted to thoſe offices, that gave a juriſdiction in the State; whilſt every magiſtrate, in his own diſtrict, was armed with power as abſolute as any Eaſtern Tyrant; excepting only in the particular point of the life of any citizen, which could only, on appeal to the people, be taken away by their award.

The Romans were not ſo ignorant of the nature of Government, as not to know, that the moſt abſolute government, provided it were well adminiſtered, would always be the moſt beneficial government to any ſociety, but more eſpecially to a military ſtate, and a nation deſirous to extend its bounds and enlarge its dominions. Their maxim therefore ſeems to me to have been, after the expulſion of the Kings, not to enervate the ſovereign power in any particular branch, but as the State increaſed, and its ſway grew more extenſive, to divide the branches, and rather to provide againſt

the abuſe of power, than to leſſen its force. And for this reaſon, they did not tie up the hands, into which they put the executive power of their Government, but made their policy conſiſt in often changing the hands, to which it was conſigned.

Eutropius, and *Florus* both, as I remember (but I write now only from memory, and therefore may miſtake), confirm this opinion of mine, by ſaying, the only precautions the Romans took, at the eſtabliſhment of the Commonwealth under the firſt Conſuls, againſt future tyranny, was to divide the ſovereignty, and ſhorten its date. *Ex perpetuo annuum placuit, ex ſingulari duplex, ne ſolitudine vel morâ corrumperetur*, ſays *Florus*, *De mutatione Reipublicæ*. *Eutropius* makes juſt the ſame reflection in relating the inſtitution of the Conſuls; *et placuit ne imperium longius, quam annum haberent, ne per diuturnitatem poteſtatis inſolentiores redderentur.*

Whoever conſiders the nature of the Roman conſtitution, and all the changes made in the adminiſtration of the Government, and by thoſe, I mean, changes not ſuddenly and violently, but deliberately and regularly made; not by arms, but by inſtitution; and by powers not uſurped, but delegated; whoever, I ſay, examines theſe changes, will, I think, find in

all of them this maxim and this policy prevail: for upon every new erected office, which I grant was a diviſion of the ſovereign power, ſtill in every office, the new power given, or the old power remaining, was, as far as it reached, and as its diſtrict extended, quite abſolute. Thus, when the Cenſors and Prætors were created, that creation took a branch of power from the Conſuls, but it left their military power as abſolute as ever; and only took away domeſtic powers, which the Conſuls, from their conſtant reſidence at a diſtance, in the camp, had not opportunities of exerciſing in the city. And when theſe domeſtic powers were taken from the Conſuls, they were given too to officers, who, though of another denomination, were full as abſolute in thoſe diſtricts, as the Conſuls had been.

What the Romans therefore depended upon for their ſecurity againſt oppreſſion and the abuſe of power, was not, in my opinion, the limiting their Governors in point of power, but the limitation of that power in point of time; as by theſe means, though each Governor, whilſt he was ſuch, was abſolute, yet as he was not a Governor for life, ſo he became accountable, when he was a private man, for what he had done, when he acted in a public character; and was ſubject, when he quitted his magiſtracy, to examination and cen-

ſure for that conduct, which, whilſt he ws in office, was ſubject to no check or controul. And as *Eutropius* ſays, *civiles ſemper eſſent, qui ſe poſt annum ſcirent futuros eſſe privatos.*

By this manner then of making power abſolute but temporary, and making thoſe who were entruſted with it, accountable afterward for the uſe they had made of it, the Romans had all the advantages of an abſolute Government, without being expoſed to its inconveniencies; and enjoyed all the benefit, that ariſes to any ſociety from the quick execution of prudent counſels in deſpotic governments, without being expoſed to thoſe diſadvantages, which will, I believe, always attend the entruſting power with thoſe, who are as little ſubject to future puniſhment, as preſent control.

Beſides this, as each Governor was to be ſoon again a member of the Public, he conſtantly looked upon his own intereſt and the intereſt of the Public as united; as people have generally a view to their future, as well as their preſent intereſt; and are not leſs mindful of their reverſionary privileges, than thoſe they poſſeſs: whereas thoſe rulers, who are for ever disjoined from the Public, and of courſe purſue their own intereſt, too often, at beſt, neglect the other, if it does *not* jarr with their own, and ſeldom fail to ſacrifice it to their own, if it *does*.

All I have written tends, you ſee, ſolely to prove, that the power, I ſuppoſe the Cenſors to have had, was not inconſiſtent with the genius of the Roman conſtitution, or diſſimilar to the other offices and branches of the State. The powers of the Conſuls, the Tribuns, the Prætors, the High-Prieſt, were equally abſolute in their provinces: the power of the Dictator was ſo too*: but as the Dictatorial power was more comprehenſive than any of the others, ſo it was more ſhort: which is another example of the proportion the Romans ever obſerved between the extent of authority, and its duration: and that as the firſt was occaſionally increaſed, according to the exigence of the State, the other was ſtill proportionably diminiſhed.

As it was owing to the obſervation of theſe rules, this policy, and theſe maxims then, that what was called the Roman liberty was preſerved; ſo it was by the breach of them, that it was deſtroyed: and that, which made the Emperors of Rome more abſolute, than any of her former maſters, was not the enlarging the power of former magiſtracies, but the uniting of them, and protracting their duration. Had the Dictatorſhip of *Julius*, or the Tribunſhip of *Auguſtus Cæſar*, been annual, inſtead of perpetual, Rome would

* Dictatoris imperium quaſi Numen. *Liv.*

have been as free under either of them, as under any of the *Fabii* or the *Scipios*.

I have inſenſibly ſpun this diſſertation into a moſt unconſcionable length; and ſince you find it is impoſſible for me to begin writing to you without filling four or five ſheets of paper, I fear for the future you will dread ſeeing my hand on the ſuperſcription of a Letter.

Adieu.

P. S. There is one thing I have forgotten to mention in the body of my Letter, which however I muſt not omit, ſince it corroborates ſo ſtrongly all the other evidences produced to ſhew, that there is nothing inconſiſtent with the reſt of the Roman conſtitution, in ſuppoſing the Senators to have been nominated by the Conſuls and Cenſors, and not elected by the people: the circumſtance I mean is, that of the principal magiſtrates, that ever preſided in the Roman government, which were the Dictators, being, in all the freeſt ages of *Rome*, conſtantly appointed by one of the Conſuls, and not choſen by the Tribes.

LETTER VII.

Dr. Middleton to Lord Hervey.

LETTER VII.

Dr. Middleton to Lord Hervey.

MY LORD, *Cambridge, July* 1, 1735.

I AM ſorry to find, by your Lordſhip's laſt Letter, that you are ſo averſe to the project of printing; but cannot be perſuaded, that it is any motive of vanity, which reſtrains you; ſince, as far as that principle can influence, all its force lies evidently on the other ſide; except that your apprehenſions from the Criticks on a ſubject ſo intricate, and where your Lordſhip is ſo ſtrongly intrenched, may juſtly be called vain. I ſhall not deſpair, however, of prevailing with your Lordſhip, by the argument, that I am now offering, that is,

the incloſed, which cannot fail of giving you a better opinion of your own cauſe, by expoſing the weakneſs of mine. Your Lordſhip will here ſee the whole force, that I have been able to collect againſt you: if you can repel this, you may puſh on as freely as you pleaſe, without fearing an ambuſcade; for I have no troops in reſerve, and nothing left but to beg quarter.

Your Lordſhip need make no apology for the length of your Letters: I am never better pleaſed, than to ſee your cover well ſtuffed; and I receive them, as I would gold, with pleaſure to find them ſo weighty in the hand: for where they do not happen to convince, they ſtill open my mind, by pointing out the places, and ſubjects of uſeful reflection. Your Lordſhip's obſervations on the peculiar advantages of the Roman government are very ingenious, and in the main, I believe, very true. It was certainly good policy to allow the magiſtrate power enough for a vigorous diſcharge of his commiſſion, without the inconvenience of recurring, on all occaſions, to the people: but it was the great ſecurity of their liberties, that all their magiſtrates were accountable, and that the dernier reſort and abſolute power, in all caſes, was lodged in the Body of the people.

What I now ſend encloſed, is all, that I have yet been able to tranſcribe without the help of an amanuenſis. This ſhort ſketch will probably cure your impatience for the reſt. I ſhall venture however to trouble your Lordſhip with the ſuite of my argument, as ſoon as my other avocations, and an attendance on a trifling duty, that devours all my time, will give leave. I wiſh that I had more eaſe and leiſure to purſue ſuch ſtudies only, as I like, that is, ſuch as your Lordſhip would recommend to me.

I am, &c.

LETTER VIII.

Dr. Middleton to Lord Hervey.

2

LETTER VIII.

Dr. Middleton to Lord Hervey.

My Lord,

WHEN your Lordſhip firſt required my thoughts on the method of filling up the Roman Senate, I gave them in the ſimplicity of my heart; the beſt, that then occurred to me, on a ſubject, for which I was not particularly prepared. I fancied, that I could dictate to your Lordſhip, as Monſ. *Vertot* to Earl *Stanhope*, and recollecting, that I was writing to a court, thought it a point of good breeding, to keep clear of Greek and Latin. But your Lordſhip has fairly caught me, and by your two elaborate diſſertations on the queſtion, has given me a pattern, how

I ought

I ought to have written on an argument of learning, or how, at leaſt, to Lord HERVEY.

Cicero, in ridicule of the Lawyers, ſays, that in three days time he could profeſs the Law himſelf. It was always the privilege of great Geniuſes to excel in whatever they attempt: and your Lordſhip, I ſee, can turn Critick at any warning.

Could I play the courtier, as well as your Lordſhip does the Scholar, what fine things might I ſay on the wonder of theſe talents, that from the midſt of a court, without leiſure, and without libraries, can throw more learned duſt upon a queſtion, than even *Bentley* himſelf! But ſince your Lordſhip condeſcends to deal with me on the level of my own character, and challenges me at my own weapons, I muſt not decline the engagement, though by entering the liſts with your Lordſhip, I ſhall only ſhew, what has been the obſervation of ages, how much genius is ſuperior to induſtry, and parts to mere learning.

In my former letter, I choſe to begin my account of the Senate, from that time, when its power and glory were at their height, and its Hiſtory conſequently the moſt worthy of our notice; when it was free in its deliberations, and open in its acceſs, to the virtue and induſtry of every citizen. But ſince your Lordſhip

reſolves to do in this, what you love to do in every queſtion, ſearch it to the bottom, trace its origin and progreſs through every period of its duration, I find myſelf obliged, in compliance with your Lordſhip's method, to explain my ſentiments on its original conſtitution and legal manner of ſupply, from the very foundation of *Rome*, to the oppreſſion of its liberty. And that I may put the matter in diſpute upon a clear iſſue, it will be proper, in the firſt place, to ſtate diſtinctly the difference of opinion, that ſubſiſts between us.

Your Lordſhip's opinion is, "that under the Kings "of *Rome*, the choice and nomination of all the Se- "nators depended wholly on the will of the Prince, "without any right in the people, either direct or in- "direct: that the Conſuls, who ſucceeded to the "kingly power, enjoyed the ſame prerogative, till "the creation of the Cenſors; and that theſe ever after "poſſeſſed the ſole and abſolute power of making and "unmaking Senators."

My notion on the other hand is, "that the Kings, "the Conſuls, and the Cenſors acted in this affair, "but miniſterially and ſubordinately to the ſupreme "will of the people; in whom the proper and abſolute "power of creating Senators always reſided."

I ſhall proceed therefore to examine, in your Lordſhip's method, what evidence of facts, or grounds of probability, can befound in favour of my hypotheſis, through all the ſeveral periods of the Roman hiſtory.

I muſt confeſs, in the firſt place, that, as far as our argument is concerned with the Regal government of *Rome*, your Lordſhip has all the Latin writers on your ſide, who conſtantly ſpeak of the right of creating Senators, as a branch of the royal prerogative. But in computing the proper force of this evidence, we muſt remember, what your Lordſhip has juſtly obſerved, that none of thoſe writers treat the queſtion profeſſedly, but touch it only incidentally; and that it is natural to all, upon the ſlight and occaſional mention of an event, to aſcribe it to the principal agent, concerned in its production; ſo as to impute the acts of popular aſſemblies to the Prince or ruling magiſtrate, who convened and preſided in them, and had the chief influence, perhaps, in determining the tranſactions themſelves.

Thus, when *Livy* tells us, "that the Præfect of the "city created the firſt Conſuls, and that *Brutus*, one of "theſe Conſuls, created *P. Valerius*, his collegue in "that office;" or that the "*Interrex* on other oc-"caſions created the Conſuls;" or "that the *Pontifex* "*Maximus*

"*Maximus* was ordered by the Senate to create the firſt Tribuns[a]," he means nothing more, than that thoſe magiſtrates called the people together, in order to make ſuch creations, in which they aſſiſted and preſided[b]. And as this is the uſual ſtyle of all writers, ſo it is peculiarly of thoſe, who write the hiſtory of their own country, and for the information of their own people; who have not the patience, to treat minutely of things, which they ſuppoſe to be known to their readers, as well as to themſelves: and hence it ſometimes happens, that the origin of cuſtoms and conſtitutions of the greateſt importance are left dark and obſcure, not only to all ſtrangers, but even to the natives of later ages.

The caſe however is different with *Dionyſius* of *Halicarnaſſus*; who profeſſes to write for the inſtruction of ſtrangers; and undertakes to explain the civil

[a] Duo conſules inde, comitiis centuriatis, a Præfecto urbis, ex commentariis Servii Tullii, creati ſunt. *Liv.* l. i. 60.

Brutus collegam ſibi comitiis centuriatis creavit P. Valerium. *Ibid.* l. ii. 2.

Is conſules creavit Q. Publium Philonem & L. Papirium Curſorem. *Ibid.* l. ix. 7.

Factum S. C. ut Q. Furius, Pont. Max. Tribunos plebis crearet. *Ibid.* l. iii. 54.

[b] Ibi extemplo, Pontifice Maximo comitia habente, Tribunos plebis creaverunt. *Ibid.*

government of *Rome*, and the origin of its laws and conſtitutions, from the moſt authentic records, with the exactneſs of a Critick, and the diligence of an Antiquary, as well as the fidelity of an Hiſtorian [c].

This celebrated author then informs us, that when *Romulus* had formed the project of his Senate, conſiſting of an hundred members, he reſerved to himſelf the nomination only of the firſt, or preſident of the aſſembly, and gave the choice of all the reſt to the people, to be made by a vote of their Tribes, and their Curiæ.—But muſt we prefer one Greek to all the Latin authors? Yes, as we prefer one poſitive evidence of credit to a hundred negative ones; or one writer, who ſearches things to the bottom, to any number, who, without the pains of ſearching, take up with the popular and vulgar account of things.

But of all the Roman writers, whom your Lordſhip has cited on the occaſion, as *Livy* is the chief, ſo he will be found perhaps to be the only one, who in the preſent caſe deſerves any regard from us; the reſt of them, for the moſt part, are but tranſcribers

[c] Quibus nos non ſine ratione aſſentimur; ſacrorum ſcilicet & reconditorum librorum teſtimoniis fidem habentes. *Dionyſ.* lib. xi. § 62. *de ſeipſo.*

or

or epitomizers of him, rather than hiſtorians; the end of whoſe writing is not ſo much to inſtruct, as to refreſh the memory with general notices: ſo that in effect, it is the ſingle credit of *Livy*, which, in the queſtion before us, ſtands oppoſed to *Dionyſius*, and where theſe two happen to differ, it cannot be difficult to decide, which of them ought to have the preference; nay, it is already decided by the judgment of all the beſt critics; who, upon the compariſon, have univerſally preferred the diligence and accuracy of *Dionyſius*, to the haſte and negligence of *Livy*[4].

I might add to this, the general prejudice and averſion, that the Romans had to the name of King,

[4] Multa enim Dionyſius de Romanorum ceremoniis religionibuſque in Deos; non pauca de variis ritibus atque inſtitutis, deque eorum legibus ac tota politia accurate diligenterque ſcripſit, quæ Livius cæterique Hiſtorici partim omnino prætermiſerunt, partim leviter tantum ſtrictimque attigerunt. *H. Steph in Dionyſ.* c. 6.

Nos haud immerito prætuliſſe Dionyſii curam & diligentiam Livii feſtinationi: adeo circumſpecte Dionyſius, adeo negligenter Livius, &c. *Hen. Glareanus.*

Livio in ea parte præfertur, quod plura quam ille ſcribat & diligentius, &c. *Bonifacius.*

Cujus major fides in hiſtoria, quam Livii, Tranquilli, Taciti, Arriani. *Ant. Poſſevin.*

Multis argumentis mihi perſuaſi, antiquiſſima hæc populi Romani geſta longe diligentius a Dionyſio. *Onuph. Panvin. Comm. in Faſt.* p. 62.

See the teſtimony of other critics prefixed to *Hudſon*'s edition of *Dionyſius.*

which would make them apt to conclude, without inquiry, that no ſhare of liberty could poſſibly ſubſiſt under a regal government.—But to proceed with our hiſtory.

Upon the peace and league of union made between *Romulus* and *Tatius*, King of the *Sabins*, the number of the Senate, as *Dionyſius* writes, was doubled by the addition of an hundred new members, from the *Sabin* families; all choſen by the people in the ſame manner as the firſt hundred; but takes notice withal, that almoſt all the old writers concur in this account, excepting a few, who declare the additional number of *Sabins* to have been only fifty *: which may ſerve as a ſpecimen of the diligence of this author's inquiries: whereas *Livy* is not only ſilent about this augmentation of the Senate, but, as your Lordſhip owns, ſeems expreſsly to contradict it. Yet all the later writers, and your Lordſhip with the reſt, chuſe to follow *Dionyſius* in oppoſition to him; and if in this queſtion of the augmentation, why not in the other of the nomination of the Senators? for, as far as the caſe can be determined by authority, the character of *Dionyſius* will bear us out in adhering to him, preferably to all other

* *Dionyſ.* l. ii. 47. Edit. *Hudſon.*

hiſtorians,

hiſtorians, eſpecially in all points of antiquity, or things remote from their own knowledge.

Let us examine therefore in the next place, what real facts may be collected within this period, to confirm the teſtimony of *Dionyſius*.—All hiſtorians agree, that great powers and privileges were originally granted to the people by the conſtitutions of *Romulus*. We learn from *Livy*, that he had no ſooner ſecured his new city by a wall, than he began to provide laws for the citizens; becauſe nothing elſe could unite a multitude into one common body[f]. And one of his firſt laws, according to *Dionyſius*, was to divide the people into three *Tribes*, and each Tribe into ten *Curiæ*, for the greater convenience of voting, and diſpatching the public buſineſs in their aſſemblies[g]. *Romulus* had reigned eleven or twelve years before his union with the *Sabins*; which makes it probable, or certain rather, that he had made this diviſion of the people before that æra; and in ſo long an interval had ſettled, what was the firſt thing neceſſary, the form of his political government.

[f] Vocata ad concilium multitudine, quæ coaleſcere in populi unius corpus nulla alia re, præterquam legibus poterat, jura dedit. *Liv.* i. 8.

[g] *Dionyſ.* l. ii. 7.

Each of the thirty *Curiæ* of old *Rome* had a temple or chapel aſſigned to them, for the common performance of their ſacrifices and other offices of religion: ſo that they were not unlike to our pariſhes. The remains of theſe little Temples, or old *Curiæ*, as they were called, were to be ſeen many ages after on the Palatine hill [h]; the place where *Romulus* firſt built the city, and always reſided: whence *Manutius* draws an argument to prove, that the inſtitution of the *Curiæ* muſt be previous to the union with the *Sabins*, ſince theſe were ſeated ſeparately from the *Romans*, on the *Capitoline* and *Quirinal* hills [i]. All this ſupports the account of *Dionyſius*, and takes off, what your Lordſhip alledges as the ſtrongeſt objection to it, *viz.* that the *Curiæ* were not then eſtabliſhed, when he ſuppoſes the Senate to have been elected by them.

Again—As it is agreed on all hands, that *Romulus* inſtituted the *Comitia Curiata*, or the public aſſemblies of the people, called to vote in their ſeveral *Curiæ*; ſo it is agreed likewiſe by all, that the matters ſub-

[h] Per ima montis Palatini, ad aram Conſi; mox ad Curias veteres, &c.—forumque Romanum & Capitolium non a Romulo, ſed a T. Tatio additum urbi credidere. *Tacit. Annal.* xii. 24. Item *Dionyſ.* ii. 50. *Manut. de Senatu Rom.*

[i] *Dionyſ.* l. ii. 50.

jected

jected to their deciſion, were, the choice of all the magiſtrates, and the right of making of laws, war and peace. An ample juriſdiction, and in the moſt important articles of government, though not wholly abſolute, as we learn from *Dionyſius*, unleſs the Senate concurred with them[k].

But this method of tranſacting all the great affairs by the people, aſſembled in their *Curiæ*, after it had ſubſiſted through five ſucceſſive reigns, was found to be inconvenient. For in aſſemblies ſo conſtituted, where every individual had an equal vote, the iſſue of all deliberations muſt of courſe depend on the poorer ſort, who are always the moſt numerous, though not always the moſt reaſonable or incorrupt. To remedy this inconvenience, *Servius Tullius*, the ſixth King, inſtituted a new diviſion of the people into ſix Claſſes, according to a *Cenſus*, or valuation of their eſtates: theſe claſſes he ſubdivided into one hundred and ninety-three centuries, and contrived to throw a majority of theſe Centuries, that is, ninety-eight of them, into the firſt claſs of the richeſt citizens: by which regulation, though every man voted now in his *Century*, as before in his *Curia*, yet as all matters were decided by a majority of the *Centuries*, ſo the balance of power was wholly

[k] *Dionyſ.* l. ii. 14.

transferred into the hands of the rich; whilſt the poorer, without perceiving it, were deprived of their former weight and influence in the affairs of ſtate[l]. This wiſe inſtitution was ever after obſerved through all ſucceeding ages, in the elections of the principal magiſtrates, and the determination of all the principal tranſactions of the Republic.

Theſe facts, confirmed by all authors, demonſtrate the power of the people to have been extremely great, even under the regal government. It extended to the choice, not only of their Kings, but of all the other magiſtrates; and I find no reaſon to imagine, that the Senators were excepted, or none at leaſt, ſufficient to balance the contrary teſtimony of ſo grave an author as *Dionyſius*.

On the demolition of *Alba* by *Tullus Hoſtilius*, ſome of the chief families of that city were enrolled likewiſe into the Senate. *Livy* reckons ſix, *Dionyſius* ſeven[m]: and to make their accounts conſiſtent with what is delivered concerning the limited number of

[l] Non enim viritim ſuffragium eadem vi eodemque jure promiſcue omnibus datum eſt: ſed gradus facti, ut neque excluſus quiſquam ſuffragio videretur, & vis omnis pene primores civitatis eſſet. *Liv.* i. 43. Item *Dionyſ.* l. iv. 20, 21.

[m] *Liv.* i. 30. *Dionyſ.* iii. 29.

the

the Senate, *Manutius* imagines, that theſe *Albans* were not actually made Senators, but Patricians only, and by that means rendered capable of being elected into the Senate on the occaſion of a vacancy. But your Lordſhip has ſolved the difficulty much better, by ſuppoſing, that no more *Albans* were taken into the Senate, than to ſupply the vacancies ſubſiſting at the time, ſo as to fill it up to its ſettled complement of two hundred. This whole affair however was not tranſacted, as *Dionyſius* intimates, without the previous conſent both of the Senate and the people [n].

The laſt augmentation of the Senate, under the Kings, was made by *Tarquinius Priſcus*, who added an hundred new members to it, from the *Plebeian* families, and ſo enlarged the whole number, from two, to three hundred. He did this, as *Livy* informs us, to ſecure and ſtrengthen his own intereſt, by raiſing a ſure faction to himſelf in the new Senators of his own creation [o]. Whence Monſ. *Vertot* draws a concluſion, which your Lordſhip does not admit for a good one, "that the people had no ſhare in this election [p]." For it is

[n] *Dionyſ.* iii. 29.

[o] Factio haud dubia regis, cujus beneficio in curiam venerant. *Liv.* i. 35.

[p] See M. *Vertot*'s Anſwer to Earl *Stanhope*.

hardly credible, that an innovation of ſuch importance, which muſt needs diſguſt the Nobles, ſhould be attempted and eſtabliſhed by an elective King, hardly ſettled in his throne, without the help and concurrence of the Commons: and eſpecially by a Prince, ſo cautious of giving jealouſy to his ſubjects, that he would not accept the robes and enſigns of ſovereign power, which were preſented to him by the *Tuſcans*, whom he had ſubdued in war, till he had firſt conſulted the Senate and the people, and obtained their approbation [s].

But your Lordſhip remarks, that even *Dionyſius* himſelf aſcribes this act to the Prince, without any mention of the people [t]: to which I anſwer, that after he had preciſely and frequently explained the whole proceſs of electing and filling up the Senate, might he not think it needleſs to repeat the ceremonial on every occaſion? Might he not imagine, that what he had once ſo particularly deſcribed, would be underſtood and applied to every other caſe of the ſame kind, that he ſhould afterwards happen to ſpeak of? And when he had once ſettled this point, was it not natural for him, like all other writers, for the ſake of brevity, to impute the act done in conſequence of it, to the principal mover and director of it? Since *Dionyſius* then, the

[s] *Dionyſ.* iii. 62. [t] *Id.* 67.

moſt

moſt accurate of all the Roman hiſtorians, and who treats the particular queſtion under debate more largely and clearly than any of them, is expreſsly on my ſide; and ſince all the reſt, who ſeem to differ from him, touch it but ſlightly and incidentally, nor yet abſolutely contradict him; I cannot help thinking, that, as far as authority reaches, my hypotheſis muſt appear to be better grounded than your Lordſhip's.

I ſhall conſider therefore in the laſt place, how far my opinion is ſupported by probability, or confirmed by arguments, drawn from the natural and fundamental principles of the Roman government, as it was adminiſtered under the Kings. The firſt citizens of *Rome* were all voluntary adventurers, when their young leader *Romulus* had neither power to force, nor means to attach to his ſervice; but by the promiſe of great rights and privileges, and a ſhare with him in the adminiſtration of their common affairs. This indulgence was neceſſary to his circumſtances; and we find from unconteſted facts, that he actually granted them all the liberties even of a popular government; "the "right of making laws, war, and peace, with the "choice of all their magiſtrates," and moſt probably therefore, of the Senators alſo.

whom

On

On the other hand, it ſeems improbable, that a people ſo fierce, impatient, and jealous of their rights as the *Romans*, would ever ſuffer themſelves to be deprived of any that had been once granted, and poſſeſſed by them; or that Kings elective, and of a very limited juriſdiction, ſhould be diſpoſed or able to wreſt them wholly out of their hands. Their firſt King *Romulus* no ſooner began to violate the conſtitutions that he himſelf had made, than, as it is commonly believed, he was privately taken off[s]; and their laſt King *Tarquinius*, by a more open and violent infringement of their liberties, not only loſt his crown, but gave occaſion to the utter extinction of the kingly government[t]. The intermediate Kings do not ſeem to have made any attempt upon the liberties of the people: for in the caſe abovementioned, when *Servius Tullius* contrived to reduce the authority of the poorer ſort, it was only to advance that of the rich; and to change the hands, not the power of his maſters: to whom,

[s] Οἱ δε πιθανωτατα γραφοντες, προς των ιδιων πολιτων λεγεσιν αὐτον ἀποθανειν. *Dionyſ.* ii. 56. item *Appian de Bell. Civ.* ii.

[t] Hic enim regum primus traditum a primoribus morem de omnibus Senatum conſulendi ſolvit, domeſticis conciliis remp. adminiſtravit, bellum, pacem, fœdera, ſocietates per ſe ipſe, cum quibus voluit, injuſta populi ac Senatus, fecit diremitque. *Liv.* i. 48.

as *Cicero* intimates, and as *Seneca*, upon his authority, declares, there lay an *appeal* from the magiſtrates, and even from the Kings themſelves[v].

The Kings, it is true, by virtue of their office, muſt needs have had a great influence over the deliberations of the people. They had the ſole right of calling the people together; of preſiding in their aſſemblies; of propoſing the affairs to be debated; or recommending the perſons to be elected, and of delivering their own opinion the firſt[w]: ſo that we need not wonder, that the writers, who were not treating the matter critically, ſhould impute to them the reſult of all the public councils. They conſtantly do it in the caſe of war and peace, which yet was the unqueſtionable prerogative of the people; and when they do it therefore in the caſe before us, it cannot be alledged, as an argument of any weight, againſt the people's right of chuſing the Senators.

[v] Partim regiis inſtitutis, partim etiam legibus auſpicia, cæremoniæ, provocationes, &c. *Cic. Tuſc. Queſt.* iv. 1.

Æque notat, Romulum periiſſe ſolis defectione. Provocationem ad populum etiam a regibus fuiſſe. Id ita in pontificalibus libris aliqui putant, & Feneſtella. *Senec. Epiſt.* 108.

[w] Βελην τε συναγειν και δημον συγκαλειν, και γνωμης αρχειν, και τα δοξαντα τοις πλειοσιν επιτελειν. ταυτα μεν ἀπεδωκε βασιλει τα γερα. *Dionyſ.* l. ii. 14.

Upon

Upon the whole: as the origin of Rome itſelf is involved in fable and obſcurity, it is not ſtrange, that the firſt tranſactions of its citizens ſhould be obſcure and uncertain too: but upon the ſtricteſt ſearch into the ſtate of the preſent queſtion, as it ſtood under the kingly government, I cannot but conclude, from the expreſs teſtimony of the beſt hiſtorian, the concurrence of ſimilar facts, and the probability of the thing itſelf, that the right of chuſing the Senators was originally and conſtitutionally veſted in the people.

I am, &c.

LETTER IX.

Dr. Middleton to Lord Hervey.

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Dr. Middleton to Lord Hervey.

My Lord,

WE are now arrived at the Conſular State of *Rome*, which ſucceeded to the Regal: and upon this memorable change of Government, effected with ſuch ſpirit and reſolution by an injured people, for the recovery of oppreſſed rights, we may expect to find them in the full enjoyment of liberty, and in the poſſeſſion of every privilege, which they could legally claim: for our own reflection would ſuggeſt, what all authors expreſsly teſtify, that in the beginnings and unſettled ſtate of this revolution, great complaiſance

and deference would be, as indeed it was, paid by the Senate to the body of the Commons [a]. Let us examine then, what facts and teſtimonies can be collected in favour of my opinion during the firſt ſixty-ſeven years of the Conſular government, that is, till the creation of the Cenſors.

The firſt inſtance, that occurs, of popular power is, the election of the two Conſuls, to ſupply the place of the ejected King; who were then choſen, as they were ever after, by the *Comitia centuriata*, or by a vote of the people aſſembled in their centuries, according to the inſtitution of *Servius Tullius*. They were created however, as *Livy* ſays, by the Præfect of the city [b], which ſerves to explain the other ſummary accounts of elections, aſcribed to the Kings, or ruling Magiſtrates, who, like this, had no other part in the affair, than to ſummon the aſſembly, and preſide in it.

The Conſuls immediately reſtored to the citizens the rights, which their late King *Tarquin* had violat-

[a] Multa blandimenta plebi per id tempus a Senatu data. *Liv.* i. 9. vid. & *Dionyſ.* v. 2.

[b] Duo conſules comitiis centuriatis a præfecto urbis: ex commentariis Servii Tullii, creati. *Liv.* i. 60.

ed;

ed; and particularly that of the deciſion of all the great affairs of the ſtate in their public aſſemblies [c].

P. Valerius, the collegue of *Brutus* in the Conſulate, was ſo warm an aſſertor of the authority of the people, that he acquired by it the name of *Poplicola* [d]. But after great ſervices to the public, he gave umbrage and jealouſy to the citizens, by building his houſe upon an eminence; as if he had deſigned it for a citadel, and affected a power dangerous to their liberties. Upon this, he demoliſhed what he had built, and calling the people together, in order to juſtify himſelf, commanded his officers, on their entrance into the aſſembly, to ſubmit and let fall the *faſces*, or enſigns of his magiſtracy, as an acknowledgment, that the power and majeſty of the people was ſuperior to that of the Conſuls [e]. So that if the Conſular were the ſame with the Regal power, as the authors alledged

[c] Comitiorum de rebus maximis habendorum poteſtatem, &c. *Dionyſ.* v. 2.

[d] Qui populi majeſtatem venerando Poplicolæ nomen aſſecutus eſt. *Val. Max.* iv. 1.

[e] Gratum id multitudini ſpectaculum fuit, ſubmiſſa ſibi eſſe imperii inſignia; confeſſionemque factam, populi quam Conſulis majeſtatem, vimque majorem eſſe. *Liv.* ii. 7. vid. *Dionyſ.* v. 19.

by

by your Lordſhip ſeem to intimate [f], it is plain, that the power of the people was always ſuperior to both. This *Valerius*, by one of his laws, confirmed to the people the choice of all magiſtrates; and, by another, appointed an appeal to them from the ſaid magiſtrates [g].

This was the ſtate of things in the infancy of the Republic, when, as *Livy* ſays, on the occaſion of *Tarquin*'s death, the power of the people was much courted and reſpected by the Nobles, whilſt there was any apprehenſion of danger from that Prince or his family [h].

In theſe circumſtances, the Senate, which had been reduced, as your Lordſhip obſerves, by *Tarquin*'s arbitrary reign, to leſs than half of its number, was filled up to its former complement of three hundred,

[f] Sed quoniam regale civitatis genus probatum quondam, poſtea non tam regni quam regis vitiis repudiatum eſt, res manebat, cum unus omnibus magiſtratibus imperaret. *Cic. de Leg.* 3.

Libertatis autem initium inde magis, quia annuum imperium Conſulare factum eſt, quam quod diminutum quicquam ſit ex regia poteſtate, omnia jura, omnia inſignia primi Conſules tenuere. *Liv.* ii. 1.

[g] *Dionyſ.* v. 19. it. ix. 46. *Liv.* ii. 8.

[h] Plebi, cui ad eum diem ſumma ope inſervitum erat. *Liv.* ii. 21.

by

by *Brutus* and *Valerius*; or by the one or the other of them, as authors differently relate it. All that *Livy* indeed, or *Dionyſius*, ſays of the fact, is, "that "a number of the beſt citizens were choſen from the "commons to ſupply the vacancies[1]." But we cannot imagine, that an act of ſo great moment could paſs without the ſpecial command and ſuffrage of the people, at a time when nothing elſe of any moment paſſed without it: the reaſon of the thing, and the great power of the people in all ſimilar caſes, muſt perſuade us of the contrary.

The next fact, that relates to this queſtion, is, the admiſſion of *Appius Claudius* into the Senate. He was one of the Chiefs of the *Sabin* nation, who deſerted to *Rome*, with a body of his friends, and dependents, to the number of five thouſand; to whom the freedom of the city, and lands were publicly aſſigned; and to *Appius* himſelf, a place in the Senate. *Livy* does not ſay, by what authority this was done; but the nature of the tranſaction ſhews, that it could not be without the conſent of the people. *Dionyſius* ſays, that it was "by the order of the Senate

[1] *Liv.* ii. 1. *Dionyſ.* v. 13.

" and people [k];" that is, by a previous decree of the Senate, approved and ratified by an aſſembly of the commons: which was the legal and regular way of tranſacting all the public buſineſs, from the very beginning of the Republic, and continued generally to be ſo, in all quiet and peaceable times, to the end of it [l].

Theſe are the only examples of filling up the Senate, from the expulſion of the Kings, to the creation of the Cenſors: and though we are not directly informed, by what authority they were effected; yet other concurrent facts make it probable, that it was

[k] Ἀνθ' ὧν ἡ βελη και ὁ δημος εις τε τας παλριχιας αυτον ενεγραψε. *Dionyſ.* v. *Liv.* ii. 16. *

[l] Brutus ex S. Co. ad populum tulit. *Liv.* ii. 2.

Per interceſſionem collegarum, qui nullum plebiſcitum niſi ex auctoritate Senatus, paſſuros ſe perferri, oſtendunt, diſcuſſum eſt. *Liv.* iv. 49.

Poteſtas in populo auctoritas in Senatu eſt. *Cic. de Leg.* 3.

Decreverunt Patres, ut cum populus regem juſſiſſet, id ſic ratum eſſet ſi patres auctores fierent, hodieque in legibus magiſtratibuſque rogandis, uſurpatur idem jus, vi adempta, priuſquam populus ſuffragium ineat, in incertum comitiorum eventum patres auctores fiunt. *Liv.* i. 17.

* " That is, by a vote of the Commons approved by the Senate; which I take to have been the regular way of tranſacting all buſineſs at this time." MS.

by

by the intervention and power of the people; agreeably to what your Lordſhip has produced from *Livy*, and to the expreſs teſtimony of *Cicero*, who declares, that from the extinction of the Regal government, the actual choice of all members into the ſovereign council of the State was in the whole body of the citizens [m].

From theſe augmentations juſt mentioned, to the inſtitution of the Cenſorſhip, there is an interval of ſixty years or more, without the mention of any ſupply, or call of the ſenate whatſoever: and yet there muſt needs have been ſome conſtant method of ſupplying it during that time, or it would have been wholly extinct. The Conſuls, whoſe province it was to hold the *Cenſus*, or public review of the citizens, every five years, had, without doubt, in conſequence of that duty, the taſk alſo of ſettling the new roll of the Senate at each *Luſtrum*; yet we have no hint of any act of their juriſdiction relating to it, either by the admiſſion of new, or ejection of old members: the ſtate of the Senate in this period is left wholly dark to us by the ancients,

[m] Deligerentur autem in id conſilium ab univerſo populo, adituſque in illum ſummum ordinem omnium civium induſtriæ ac virtuti pateret. *Cic. pro Sext.* § 137.

Aut ab regibus lecti, aut poſt reges exactos, juſſu populi. *Liv.* iv. 4.

nor has any of the moderns, that I know of, attempted to explain it; ſo that we may the more freely indulge our own conjectures.

The moſt probable account of the matter, in my opinion, is this; that the Senate began now to be regularly ſupplied by thoſe annual magiſtrates, who were inſtituted about this time, and choſen by the people. Theſe were two *Quæſtors* of *Patrician* families, and five *Tribuns of the people*, with two *Ædiles* of *Plebeian* families; to which five more *Tribuns* were afterwards added. And if we ſuppoſe all theſe to have had an admiſſion into the Senate, by virtue of their office, and conſequently a right to be enrolled by the Conſuls at the next *Luſtrum*; they would yield a competent ſupply to the ordinary vacancies of that aſſembly: which might receive alſo ſome little acceſſion from the *Decemviri*, who were not all Patricians, nor even theſe perhaps all Senators, before their election to that magiſtracy. If this was the caſe, as I take it to have been, it will help us to account for the ſilence of authors about it, as being a thing of courſe, yet ſucceeded regularly, and ſo had nothing in it remarkable, or what ſeemed to deſerve a particular recital. But it will be difficult to hit upon any other, that could ſo eaſily eſcape the notice of all hiſtory.

The

The office of *Quæſtor*, which was inſtituted the firſt, is always mentioned by the ancients, as the firſt ſtep of honour in the Republic; and what gave an immediate entrance into the Senate [n]. As to the *Tribuns*, indeed, it has been taken for granted, on the authority of *Valerius Maximus*, that, on their firſt inſtitution, they were not admitted into the Senate, but had ſeats placed for them before the door, in the veſtibule [o]. But we may reaſonably conclude, that a magiſtrate ſo ambitious and encroaching, who had power to annul and controul, by his ſingle negative, whatever paſſed within doors, would not be long content to ſit without.

Aulus Gellius ſays, that they were not Senators before the law of *Atinius* [p]; who is ſuppoſed to be *C. Atinius Labeo*, Tribune of the people, *A. U.* 623 [q]. But that

[n] Quæſtura primus gradus honoris. *Cic. in Verr. Act.* i. 4.

[o] Illud quoque memoria repetendum eſt, quod Tribunis plebis intrare curiam non licebat. Ante valvas autem poſitis ſubſelliis, decreta patrum attentiſſima cura examinabant. *Val. Max.* l. ii. c. 2. 7.

[p] Nam & Tribunis plebis Senatus habendi jus erat, quanquam Senatores non eſſent, ante Atinium plebiſcitum. *A. Gell.* xiv. 8.

[q] *Vid.* Pighii Annales. *A. U.* 623.

Ταυτα δε ὁρωντες οἱ δημαρχοι παρησαν γαρ τῳ συνεδριῳ, παρακληθεντες ὑπο των ὑπατων. *Dionyſ.* l. vii. 25. *A. U.* 623.

Και τελο επεισαν ἡμας οἱ συμβελοι το αρχειον εασαι παρελθειν εις την βελην. *Ibid.* 49.

cannot poſſibly be true; ſince it is evident from the authority of *Dionyſius*, that near four centuries before, the *Tribuns*, by the mere weight and great power of their office, had gained an actual admiſſion into the Senate within two years after their firſt creation[r]: in which we find them debating and enforcing with great warmth the demands of the Commons, for a liberty of intermarriages with the Nobles, and the choice of a Plebeian Conſul[s]: ſo that the intent of this *Atinian* law could not be, as it is commonly underſtood, that the Tribuns ſhould be Senators in virtue of their office, for that they had been from the beginning, but that, for the future, they ſhould always be choſen out of the body of the Senate, or, which is the ſame thing, out of thoſe, who had already borne the office of *Quæſtor*.

About thirteen years before the creation of the Cenſors, the Tribuns began to aſſume a right of ſummoning or convoking the Senate; and of propounding to them whatever they thought proper[t]. A prerogative,

[r] Επειτα συναχθεντες εις το βουλευτηριον οἱ συνεδροι, παροντων και των δημαρχων. *Dionyſ.* l. x. 11.

[s] *Liv.* iv. 1, 2, 3. *Dionyſ.* xi. 57.

[t] *Dionyſ.* x. 31.

which

which the Conſuls alone had ever exerciſed before; and which I take to be a clear proof of their being then members of the Senate; and I find alſo, that two Patricians, even of Conſular dignity, were elected Tribuns of the people about the ſame time, in an extraordinary manner[t]: which can hardly be accounted for, without ſuppoſing this magiſtracy to have had an admiſſion into the Senate.

Some few years before this, upon the death of one of the Conſuls, and the ſickneſs of the other, at a time of great conſternation in *Rome*, the ſovereign power and care of the public was committed to the *Ædiles*[v]: which great deference to their office makes it natural to conclude, that theſe magiſtrates alſo were at this time in poſſeſſion of that privilege, which they certainly enjoyed not long afterwards, of being members of the Senate.

[t] Novi Tribuni plebis in cooptandis collegis, Patrum voluntatem foverunt: duos etiam Patricios Conſulareſque Sp. Tarpeium, & A. Aterium cooptavere. *Liv.* iii. 65.

[v] Circuitio & cura Ædilium plebei erant; ad eos ſumma rerum ac majeſtas Conſularis imperii venerat. *Liv.* iii. 6, 7.

But the warm conteſt hinted above, about the right of electing a Plebeian Conſul, which continued on foot for a long time, ſeems to demonſtrate the truth of my opinion; it being wholly incredible, that the Commons ſhould demand to have one of their body placed at the head of the Senate, before they had obtained ſo much as an entrance into it, for any of the other plebeian magiſtrates.

I cannot omit the mention of one fact more, not foreign to our preſent purpoſe, though it did not happen till about two hundred years later; which is this; the *Flamen Dialis*, or chief Prieſt of *Jupiter*, revived an ancient claim to a ſeat in the Senate, in right of his office; which, by the indolence of his predeceſſors, had not been claimed or enjoyed for many generations. The Prætor rejected his pretenſions, and would not ſuffer him to ſit in the Houſe; but upon his appeal to the Tribuns, that is, to the people, his right was confirmed, and he was allowed to take his place as a Senator [n]. This caſe ſhews, that the privilege of the Senate might be annexed to an office, without any notice taken of it in Hiſtory: for we have no account of the origin of

[n] *Liv.* xxvii. 8.

this

this *Flamen*'s right, nor any mention of him as a Senator, but on this very occaſion: though, from the nature of his appeal, the claim ſeems to have been grounded on ſome old grant of the people.

I am, &c.

LETTER X.

Dr. Middleton to Lord Hervey.

X

FELLEX

LETTER X.

Dr. Middleton to Lord Hervey.

MY LORD,

IT may perhaps be objected, that though the annual magiſtrates might furniſh a tolerable ſupply to the ordinary vacancies of the Senate, yet there muſt have been ſome other method of providing for the extraordinary deficiencies, made by the calamitous accidents of wars abroad, or peſtilence at home, of which there were frequent inſtances. In anſwer to which it muſt be owned, that the Senate, in ſuch particular exigencies, would demand a larger ſupply, than the public offices could furniſh; and the method of ſupplying it ſeems to

have been regulated by what the firſt Conſuls did, upon the firſt enrollment and completion of the Senate: for this was probably the ſtanding precedent; agreeably to which, all ſucceeding Conſuls, as we may reaſonably preſume, uſed to pitch upon a number of the beſt and moſt reputable citizens, of the Equeſtrian rank [v], to be propoſed to the choice and approbation of the people in their general aſſembly; who, by approving and confirming the liſt, gave them a complete and immediate right to the rank and title of Senators during life.

This will appear ſtill more probable by reflecting on a fact or two delivered by all the hiſtorians. *Sp. Mælius*, who attempted to make himſelf King, was one of the moſt wealthy and popular Commoners of the Equeſtrian order; yet, from *Livy*'s account of him, it is plain, that he was a Senator: "for his firſt ambition, he ſays, "was only to make himſelf Conſul," which ſeems to imply it: but the Dictator's ſpeech concerning him directly aſſerts it: for he obſerves with indignation, "that he, who had not been ſo much as a Tribun of the "people, and whom, on the account of his birth, the

[v] Of all orders promiſcuouſly. MS.

"city

" city could hardly digeſt as a Senator, ſhould hope to " be endured as a King [x]."

About forty years after this, *P. Licinius Calvus*, another conſiderable Commoner, was elected one of the military Tribuns, with conſular authority. He was the firſt Plebeian, who had been raiſed to that dignity: but hiſtory has not informed us, what peculiar merit it was, that advanced him to it: for, as *Livy* obſerves, " he had paſſed through none of the " public offices, and was only an old Senator, of great " age [y]." If we ſhould aſk then, how theſe two Plebeians came to be made Senators, without having borne any magiſtracy, there is no anſwer ſo probable, as that they were added to the roll of the Senate, with other eminent citizens, on ſome extraordinary deficiency, by the order of the people. For if it had been the ſole right of any *Patrician* magiſtrate to nominate to the vacancies, it is not to be imagined, that he would have beſtowed that honour on *Plebeian* families.

[x] Ex equeſtri ordine, ut illis temporibus, prædives—cui Tribunatus plebis magis optandus quam ſperandus—ut quem Senatorem concoquere civitas vix poſſet, regem ferret. *Liv.* iv. 13. 15.

[y] Vir nullis honoribus uſus, vetus tamen ſenator, & ætate jam gravis. *Liv.* v. 12.

† I ſhall

I ſhall proceed in the next place to enquire into the ſtate of the Senate, after the eſtabliſhment of the Cenſors; and try to reconcile my hypotheſis with the great power and authority delegated to theſe magiſtrates in the affair of creating Senators; in which the chief difficulty of the preſent queſtion conſiſts.

The people were now, as the ancient writers tell us, the ſole arbiters of rewards and puniſhments, on the diſtribution of which depends the ſucceſs of all governments [z]: and in ſhort, had the ſupreme and abſolute power over all perſons, and all cauſes whatſoever [a]. Theſe accounts leave no room for any exception, and make it vain to ſuppoſe, that the commons, in this height of power, would eſtabliſh a private juriſdiction, to act independently and excluſively of the univerſal one. But beſides the proofs already alledged of their univerſal prerogative, we have clear evidence likewiſe of their ſpecial right in this very

[z] *Polyb.* l. vi. 462. B. Τιμης γαρ εϛι και τιμωριας εν τη πολειτειᾳ μονος ὁ δημος κυριος, &c.

[a] Quum illi & de Sempronio & de omnibus ſummam populi Romani poteſtatem eſſe dicerent. *Liv.* iv. 42. it. iii. 35.

Populus Romanus, cujus eſt ſumma poteſtas omnium rerum. *Cic. de Haruſp. reſponſ.* 6.

caſe of making Senators. The teſtimony of *Cicero*, referred to by your Lordſhip, is alone deciſive: and the frequent declarations, which he makes, both to the Senate and the people, that he owed all his honours, and particularly, his ſeat in the Senate, to the favour of the people, are unqueſtionable proofs of it [b]. For ſuch ſpeeches delivered in public, and in the face of the Cenſors themſelves, muſt have been conſidered as an inſult on their authority, and provoked their animadverſion, if they had not been confeſſedly and indiſputably true.

The teſtimony of *Cicero* is confirmed alſo by *Livy* [c], which gives occaſion to M. *Vertot* to obſerve, " that

[b] Rex denique ecquis eſt, qui Senatorem populi Romani tecto ac domo non invitet? qui honos non homini ſolum habetur, ſed primum Populo Romano, cujus beneficio in hunc ordinem venimus. *In Ver.* l. iv. 11.

Si populum Romanum, cujus honoribus in ampliſſimo concilio & in altiſſimo gradu dignitatis, atque in hac omnium terrarum arce collocati ſumus. *Poſt. redit. in Sen.* 1.

Et palam fortiſſime atque honeſtiſſime dicerent, ſe potuiſſe judicio populi Romani in ampliſſimum locum pervenire, ſi ſua ſtudia ad honores petendos conferre voluiſſent. *Pr. Cluen.* 56.

Vid. it. *pro Domo.* 31.

[c] Aut ab regibus lecti, [in Senatum] aut poſt reges exactos, juſſu populi. *Liv.* iv. 4.

" the

" the ſole right of electing Senators is attributed to the " people by two, the moſt celebrated writers of the " Republic [d]." But after the acknowledgment of ſuch an authority, he affirms, too inconſiderately, in the very next words, " that all the facts and exam- " ples of hiſtory are clearly againſt it." For whatever thoſe facts may ſeem to intimate, on a ſlight view, and at this diſtance of time, yet it is certain, that they muſt needs admit of ſuch an interpretation, as is conſiſtent with a teſtimony ſo preciſe and authentic.

For the people's right of chuſing magiſtrates, was the very ſame with that of chuſing Senators; ſince thoſe magiſtrates, by virtue of their office, obtained a place of courſe in the Senate. This was the ordinary ſource of that aſſembly, according to the teſtimony of all writers [e]: and the particular offices, that gave this right, were thoſe of *Quæſtor*, *Tribun of the people*, *Ædile*, *Prætor*, and *Conſul*. For this was the regular gradation or ſteps of honour, which every man, in the courſe of his ambition, was to aſcend in

[d] Reſponſe au memoire de Ld. *Stanhope*, p. 20.

[e] *Liv.* xxii. 49.

their

their order. A method, contrived with great prudence and policy; by which no man could be entruſted with the ſupreme power, and the reins of government, till he had given a ſpecimen of his abilities, through all the inferior offices, and ſubordinate branches of it: and we find accordingly in the old Faſti or Annals, many examples of perſons, who had proceeded regularly through them all [f].

The young Patricians indeed, proud of their high birth, and truſting to the authority of their families, would often puſh at the higher offices, without the trouble of ſoliciting for the lower. But this was always reſented and complained of by the Tribuns, as an infringement of the conſtitution; "that the no-"bles in their way to the Conſulſhip, ſhould jump "over the intermediate ſteps, and ſlight the inferior "honours of Ædile and Prætor:" as in the caſe of *T. Quinctius Flaminius*, who from his firſt preferment of *Quæſtor*, was elected Conſul by the authority of the Senate [g]: and it was to correct this licenſe and irregu-

[f] *Q. Caſſius Longinus* was choſen Quæſtor, *A. U.* 575. Tribun of the people, 580. Ædile, 583. Prætor, 586. Conſul, 589. Vide *Pigh. Annales.*

[g] Comitia per Tribunos pl. impediebantur, quod T. Quinctium Flaminium Conſulatum ex Quæſtura petere non patiebantur. Jam

 Ædilitatem

irregularity, that *Sylla* afterwards, by a ſpecial law, injoined the obligation of paſſing through the inferior offices, as a neceſſary qualification for the Conſulate. But the practice itſelf did not derive its origin from this *Cornelian* law, as your Lordſhip ſeems to intimate, but was grounded on a conſtitution or cuſtom of ancient ſtanding.

Should I be miſtaken in what is offered above, about the time, when they firſt obtained this privilege, [of chuſing magiſtrates, and conſequently, Senators,] yet it is certain, that they were in the actual poſſeſſion of it, from the time that the Commons were made capable of holding theſe offices, which was but few years later than the æra, into which we are now entered.

Let us examine then, after all, what part really belonged to the Cenſors, in this affair of creating Senators. This magiſtracy was firſt inſtituted, *A. U.* 311. not to take any ſhare of power from the people, but of trouble only from the Conſuls; who now began to have more of it than they could poſſibly diſcharge.

Ædilitatem Præturamque faſtidiri, nec per honorum gradus documentum ſui dantes, nobiles homines tendere ad Conſulatum, ſed tranſcendendo media imis continuare. *Liv.* xxxii. 7.

The

The ſpecial buſineſs of theſe Cenſors was, to eaſe them of the taſk of holding the *Cenſus* and *Luſtrum*, which the Conſuls had not been at leiſure to do for ſeventeen years paſt [h]: that is, to take a general review or muſter of the whole people, as oft as there ſhould be occaſion; to ſettle the ſeveral diſtricts and diviſions of the Tribes; to aſſign to every citizen his proper rank and order, according to a valuation of his eſtate; and laſtly, to call over the Senate, and make a freſh roll, by leaving out the names of the deceaſed, and adding thoſe, who had acquired a right to fill their places; that is, the magiſtrates, who had borne office ſince the laſt call.

But beſides this taſk, which was purely miniſterial, they had the particular cognizance and inſpection of the lives and manners of all the citizens [i]; and conſequently, a juriſdiction to cenſure or animadvert upon every diſorder, vice, or immorality, in all ranks of men whatſoever; which they took an oath to diſcharge without favour or affection. But this power reached no farther than to inflict ſome public mark of

[h] *Liv.* iv. 8.

[i] *Cic. pro Cluen.* 46.

ignominy, on lewd and vicious perſons, in proportion to the ſcandal which they had given, by degrading or ſuſpending them from the privileges of that particular rank, which they held in the city. This was their proper juriſdiction, and the foundation of their power over the Senate; by virtue of which, they frequently purged it of ſome of its unworthy and ſcandalous members; by leaving out of the new roll, the names of thoſe Senators, whom they found unworthy to ſit in that auguſt aſſembly, for the notoriety of ſome crime; which they uſed commonly to aſſign, as the ſpecial reaſon for their inflicting this diſgrace [k].

There are many examples of Senators thus expelled; often for grave reaſons; ſometimes through mere peeviſhneſs, envy or revenge [l]; but always ſubject to an

[k] Cenſor penes quem majores noſtri judicium Senatus de dignitate eſſe voluerunt. *Cic. pro Dom.* 51.

Hic annus Cenſuræ initium fuit; rei a parva origine ortæ; quæ deinde tanto incremento aucta eſt, ut morum diſciplinæque Romanæ penes eam regimen, Senatus, Equitumque centuriæ, decoris dedecoriſque diſcrimen ſubditione ejus magiſtratus. *Liv.* iv. 8.

Patrum memoria inſtitutum fertur, ut Cenſores Senatu motis adſcriberent notas. Id. xxxix. 42.

[l] See the account of the Cenſorſhip of *C. Claudius Nero*, and *M. Livius Salinator*, in which they both peeviſhly affronted and diſgraced each

an appeal, and the final judgment of the people. So that the Cenſorian power, properly ſpeaking, was not that of making or unmaking Senators, but only of enrolling thoſe, whom the people had made; and of inſpecting their manners, and animadverting upon their vices; over which they had a ſpecial juriſdiction delegated by the people. Their rule of cenſuring was grounded on an old maxim of the *Roman* policy, injoining, "that the Senate ſhould be preſerved clear "of all blemiſh and ſtain; and an example of man-"ners to all the other orders of the city:" as we find it laid down by *Cicero*, in his book of laws; which were drawn, as he tells us, from the plan of the *Roman* conſtitution [m].

Sigonius is of opinion, that there muſt have been ſome Laws regulating the choice of Senators, and the conduct of the Cenſors, of which we have now no

each other, and were called to an account for their adminiſtration by one of the Tribuns.—Itaque ibi fœdum certamen inquinandi famam alterius cum ſuæ famæ damno factum eſt. Cn. Bæbius Tribunus plebis ad populum diem utrique dixit. *Liv.* xxxix. 37.

[m] Cenſores probrum in Senatu ne relinquunto. Is ordo vitio careto. Cæteris ſpecimen eſto. *Cic. de Leg.* iii. 3,

remains.

remains. *Feſtus* ſpeaks of one, not mentioned by any other writer, the *Ovinian* law; by which they were obliged, in making the roll of the Senate, "to "take the beſt men of every order, choſen in an aſ- "ſembly of the Curiæ [n]." *Gellius* mentions another, by which the Tribuns were firſt made Senators [o]. The *Ovinian* law was probably made ſoon after the creation of the Cenſors, or as ſoon at leaſt as they began to extend their power, and uſe it arbitrarily; in order to reduce them to the original conſtitution.

Cicero takes occaſion to obſerve in one of his ſpeeches, "that their anceſtors had provided many "checks and reſtraints on the power of the Cenſors: "that their acts had been often reſcinded by a vote "of the people: that the people by marking a man "with infamy, or convicting him of any baſe crime, "rendered him incapable of all future honours, and "a return to the Senate: but that the Cenſorian ani- "madverſion had no ſuch effect; ſince it was common

[n] Donec Ovinia Tribunitia intervenit, qua ſanctum eſt, ut Cenſores ex omni ordine optimum quemque curiatim Senatu legerent. *Feſtus* in voce *Præteriti*.

[o] *Lib.* xiii. 8.

"for

" for the perſons diſgraced by it, to be reſtored after-
" wards to the Senate, and to be made even Cenſors
" themſelves [p]." And in another place, " that their
" judgment had no other force, than to put a man to
" the bluſh; and that it was called ignominy, becauſe
" it was merely nominal [q]."

L. Metellus was animadverted upon by the Cenſors, while he was *Quæſtor*; yet, notwithſtanding that diſgrace, was choſen *Tribun* of the people, the year following, *A. U.* 540: in which office, he called the Cenſors to an account before the people, for the affront, which they had put upon him; but was hindered by the other Tribuns, from bringing that affair to a trial [r]. We find likewiſe the Cenſors, *C. Claudius*, and *T. Sempronius*, called to an account before the people for their adminiſtration [s]: and in a diſpute be-

[p] *Pro Cluent.* 42, 43, 44.

[q] Vid. *Fragment. de Repub.* l. iv.

[r] Extemplo Cenſoribus—a L. Metello Tribuno pleb. dies dicta ad populum eſt. Quæſtorem eum proximo anno tribu moverant—ſed novem tribunorum auxilio, vetiti cauſam in magiſtratu dicere. *Liv.* xxiv. 43.

[s] Non recuſantibus Cenſoribus, quo minus primo quoque tempore judicium de ſe populus faceret. *Liv.* xliii. 16.

tween themſelves, about the aſſignment of a proper Tribe to the ſons of ſlaves made free, *Claudius* affirmed, "that a Cenſor could not take from any citizen "his right of ſuffrage, without the expreſs order of "the people[t]."

Q. *Metellus*, when Cenſor, left the name of *Atinius*, one of the Tribuns of the people, out of the roll of the Senate: the Tribun, enraged at the affront, ordered the Cenſor to be ſeized, and thrown down the *Tarpeian* rock; which would have immediately been executed, had not ſome of the other Tribuns come luckily to his reſcue. The ſame Tribun however took his revenge afterwards, by a ſolemn conſecration of *Metellus*'s goods[u]. Theſe facts demonſtrate, that the power of the Cenſors, far from being

[t] Negabat Claudius ſuffragii lationem injuſſu populi Cenſorem cuiquam homini, nedum ordini univerſo adimere poſſe. *Liv.* xlv. 15.

[u] Atqui C. Atinius, patrum memoria, bona Q. Metelli, qui eum ex Senatu Cenſor ejecerat—conſecravit; foculo poſito in roſtris, adhibitoque Tibicine. *Cic. pro Dom.* 47.

Q. Metellus—ab C. Atinio Labeone—revertens e campo, meridiano tempore, vacuo foro & Capitolio, ad Tarpeium raptus ut præcipitaretur, &c. *Plin. Hiſt. Nat.* vii. 44.

Vid. *Liv. Epit.* 59.

abſolute and uncontroulable, as your Lordſhip contends, in the caſe of making Senators, had in reality little or no ſhare in it; and was much limited alſo and reſtrained, in, what is allowed to be their proper juriſdiction, the affair even of unmaking or degrading them.

I am, &c.

LETTER XI.

Dr. Middleton to Lord Hervey.

LETTER XI.

Dr. Middleton to Lord Hervey.

My Lord,

LET us inquire then, on what reaſons Monſ. *Vertot* has ſo peremptorily aſſerted, "that the "facts and examples of Hiſtory are oppoſite to this "notion" of the people's power, in the caſe under debate. By theſe facts he means, the inſtances that occur of Senators created and expelled by the ſole authority of the Cenſors, without any apparent conſent or interpoſition of the people: and ſo far it muſt be allowed, that they ſeldom made a new roll of the Senate, without ſtriking ſeveral out of it, *viz.* thirteen,

nine, eight, or ſeven at a time, as their different tempers, or the different circumſtances of the times, diſpoſed them to more or leſs ſeverity: and their adminiſtration was reckoned mild, when three or four only were ſo diſgraced by them. But it muſt always be remembered, that the ejected Senators had the right of an appeal and redreſs from the people, if they thought themſelves injured; and if they did not take the benefit of it, we may generally impute it to a diſtruſt of their cauſe, and a conſciouſneſs of guilt.

Cato the elder, when Cenſor, ſtruck ſeven out of the roll of the Senate, and among the reſt, one of Conſular dignity; the brother of the great *Titus Quinctius Flaminius*. The ſtory is too well known to be repeated: but the great quality of the perſon diſgraced, obliged *Cato* to ſet forth the greatneſs of his crime in a ſevere ſpeech; on which *Livy* remarks, "that, "if he had made the ſame ſpeech, by way of accu-

[a] Cenſores T. Quintius Flamininus & M. Claudius Marcellus Senatum perlegerunt. Quatuor ſoli præteriti ſunt, nemo curuli honore uſus, & in equitatu recenſendo mitis admodum cenſura fuit. *Liv.* xxxviii. 28.—*Liv. Epit.* xviii. it. lib. xli. 27. l. xxxix. 42. l. xxxiv. 44.

"ſation,

"ſation, to the people, before his animadverſion, "that he made after it, to juſtify himſelf, even *Titus* "*Flamininus* himſelf, if he had then been Cenſor, as "he was in the preceding *Luſtrum*, could not have "kept his brother in the Senate." In the end of this ſpeech, *Cato* puts *Quinctius* in mind, "that, if "he denied the fact, with which he was charged, "he might defend himſelf, by bringing the matter "to a trial; if not, that no man could think him "too ſeverely treated [b]." This caſe points out to us the uſual method of relief, as well as the uſual reaſon, why ſo few made uſe of it, *viz.* the difficulty of proving their innocence.

The Cenſors were generally men both of the firſt dignity, and the firſt character for probity in the city, and always of Conſular rank; ſo that their acts had naturally a great weight; and the ſeverity of their diſcipline was conſidered by the honeſt men of all orders, as a great guard and ſecurity to the State: and when they acted even on ſpiteful or peeviſh motives, yet the parties injured would not always care to go through the trouble of an appeal,

[b] *Liv.* xxxix. 42, 43.

ſince they could be relieved without it, either by the next Cenſors, as they commonly were [c]; or by procuring a new magiſtracy at any future election, they recovered their place in the Senate. But if any of theſe animadverſions continued to have a laſting effect, it was always owing to an univerſal approbation of them from all the orders of the city: for whenever they appeared to be violent or groſsly unjuſt, neither the Senate nor the people would endure them for a moment.

Thus when *Appius Claudius* the Cenſor, *A. U.* 441, upon ſome extraordinary deficiency in the Senate, filled up the new roll with ſome of thoſe citizens, whoſe grandfathers had been ſlaves, contrary to the eſtabliſhed rule and practice of the city, "there "was not a ſoul, as *Livy* ſays, who looked upon "that enrollment as valid [d]:" and the firſt thing, that the next Conſuls did, was, to annul it by an

[c] Eorum notam ſucceſſores plerumque ſolvebant. *Aſcon. not. in Divinat. Cic.* 3.

[d] Appii Claudii cenſura vires nacta, qui Senatum primus libertinorum filiis inquinaverat, & poſteaquam eam lectionem nemo ratam habuit. *Liv.* ix. 46.

appeal

appeal to the people, and to reduce the Senate to the old liſt, as it was left by the preceding Cenſors [e].

The office of Cenſor, at its firſt inſtitution, was deſigned to be quinquennial, or to continue in the ſame hands for five years; but ſoon after its inſtitution A. U. 320, it was reduced, as your Lordſhip obſerves, to one year and an half, by a law of *Mamercus Æmilius* the Dictator. This regulation was very popular, but provoked the Cenſors ſo highly, that in revenge for this abridgment of their authority, they put the laſt diſgrace upon the Dictator, "turned him out of "his Tribe, and deprived him even of his vote as a "citizen." But a proceeding ſo violent was, we may imagine, immediately overruled, nor ſuffered to have any effect: "for the people were ſo enraged "at it, that they would have torn the Cenſors in "pieces, had they not been reſtrained by the autho-"rity of *Mamercus* himſelf [f]:" who, within eight years after, was made Dictator again for the third

[e] Itaque Conſules—initio anni, queſti apud populum deformatum ordinem prava lectione Senatus,—negaverunt eam lectionem ſe, quæ ſine recti pravique diſcrimine, ad gratiam libidinemque facta eſſet, obſervaturos. *Liv.* ix. 30.

[f] Populi certe tanta indignatio coorta dicitur, ut vis a Cenſoribus nullius auctoritate præterquam ipſius Mamerci, deterreri quiverit. *Liv.* iv. 25.

time. "So little regard was paid," as *Livy* obſerves, "to the Cenſorian mark of diſgrace, when it was in-"flicted unworthily [g]." And about a century after, we find one of the Tribuns ſpeaking of this ſame fact, "as a proof of the great miſchief, which the violence "of theſe magiſtrates might do in the Republic [h]."

I have hitherto been explaining the ordinary power and juriſdiction of the Cenſors as far as it related to the creation of Senators. But as under the Conſuls, ſo under theſe magiſtrates, there muſt have been, as I obſerved, ſome extraordinary creations, to ſupply the extraordinary vacancies, occaſioned by wars and contagious diſtempers: and the ſtanding rule, in all ſuch caſes, was, to draw out a liſt of the beſt men from all the orders of citizens, to be propoſed to the ſuffrage and approbation of the people, in their general aſſembly.

We meet with no account indeed of any ſuch extraordinary creation, under the authority of the Cenſors, nor even of any ordinary one, till one hundred and twenty years after their firſt inſtitution, in the Cenſorſhip of *Appius Claudius:* but from the reaſon of the

[g] Adeo—nihil cenſoria animadverſio effecit, quo minus regimen rerum ex notata indigne domo peteretur. *Liv.* iv. 30.

[h] Tenuit Æmilia lex violentos illos Cenſores—qui, quid iſte magiſtratus in Repub. mali facere poſſent, indicarunt, &c. *Ibid.* 34.

thing we may fairly preſume, that there had been ſeveral inſtances of both kinds. We read of a Dictator, choſen for that very purpoſe, A. U. 537. at a time, when there was no Cenſor in office, and when the Senate was reduced by the war with *Hannibal*, to leſs than half of its uſual complement. This Dictator, *M. Fabius Buteo*, though leſs tied down to forms, than any other magiſtrate, yet being a prudent and moderate man, reſolved to take no ſtep out of the regular way. " Wherefore, " he immediately aſcended the roſtrum, and in an aſ- " ſembly of the people, called thither for that occa- " ſion, gave an account of what he propoſed to do. He " then ordered the roll of the laſt Cenſors to be tran- " ſcribed, and read over, without ſtriking one name out " of it; and gave this reaſon for it, that it was not fit " for a ſingle man to exerciſe a juriſdiction over the re- " putation and manners of Senators, which legally be- " longed to two. Then in the places of the dead, " he firſt enrolled thoſe, who had been *Curule* magi- " ſtrates ſince the laſt call; after them, the *Tribuns*, " *Ædiles*, and *Quæſtors*; and laſtly, thoſe, who had " not borne any of theſe offices, but had ſerved with " honor in the wars, and could ſhew ſpoils taken " from the enemy, or a *Civic* crown: and having thus " added an hundred and ſeventy-ſeven new names to

" the old liſt, with the univerſal approbation of the " whole aſſembly, he laid down his office [i]."

M. *Vertot* argues, that " this nomination of Senators " was the pure act and deed of the Dictator, or other- " wiſe there could be no reaſon to praiſe him for it:" which he confirms, by ſhewing on the other hand, " that " the blame alſo of a bad choice fell on the perſon of " the magiſtrate; as in the caſe of *Appius Claudius*, " when he choſe the grandſons of ſlaves [k]."

But this inference is ſo far from being well-grounded, that, on the contrary, the two caſes put together clearly ſhew, that the approbation or diſlike of the people did not terminate in the mere praiſe or diſpraiſe of the magiſtrate, but was eſſential to the validity of the act; in which the magiſtrate was but the miniſter of the law, or the will of the people. For in the firſt caſe, where the people approved, the act ſtood firm, and had its effect; but in the other, where they diſapproved, it was immediately annulled and reſcinded.

There was another extraordinary creation of Senators made by *Sylla*, the Dictator, in order to fill up the Senate, exhauſted by his proſcriptions and civil wars, with

[i] *Liv.* xxiii. 33.

[k] See Reſponſe au Memoire de Lord Stanhope, p. 31.

three

three hundred new members from the Equeſtrian order: he gave the choice of them however to the people, to be made in an aſſembly of their Tribes, which of all elections was the moſt free; with deſign no doubt to pleaſe the body of the citizens, or to make them ſome amends for his other violences, by paying this regard to their ancient rights and liberties [l].

There is likewiſe a third augmentation of the Senate prior to that of *Sylla*, aſcribed to the younger *Gracchus* by the epitomizer of *Livy:* by which ſix hundred of Equeſtrian rank are ſaid to have been added to it at once [m]. But this cannot be true, as being contrary to the teſtimony of all the beſt writers, who ſpeak of nothing more, than that "the right of judging cauſes, "which had belonged to the Senate, from the time of the "Kings, was transferred from them by *Gracchus* to the "*Equites* or Knights; in common with the Senators: "ſo that three hundred were to be taken from each "order, out of whom the judges in all cauſes ſhould be "choſen promiſcuouſly by lot [n]." This was the act of

[l] *Appian. de Bell. Civ.* l. i. p. 413.

[m] *Epit.* lib. lx.

[n] Μονοι γαρ εκρινον τας δικας, [οἱ συγκλητικοι] και δια τελο φοβεροι τῳ δημῳ και τοις ἱππευσιν ησαν. ὁ δε τριακοσιους των ἱππεων προσκαλελεξεν αυτοις, ωσι τριακοσιοις, και τας κρισεις κοινας των ἑξακοσιων ἐποιησε. *Plutarch. in Vit. C. Gracch.*

C. Gracchus,

C. Gracchus, which continued in force till the time of *Sylla*; and it was this, probably, which led that writer into his miſtake: but if any augmentation of the Senate had been made at the ſame time, it is certain, that it muſt have been made by the power of the people; which no man ever aſſerted ſo ſtrenuouſly, or carried ſo high, as this very *Gracchus*.

Theſe extraordinary creations of Senators, made with the approbation, or by the expreſs order of the people, in their general aſſemblies, may be preſumed to have paſſed according to the old forms of the conſtitution, and conſequently point out to us the regular method of proceeding in ordinary caſes.

But the augmentation made by *Sylla*, as it enlarged the number of the Senators beyond what it had ever been, ſo it gave an admiſſion probably to many, who were unworthy of that honour[o]: and the general licence and corruption of manners that was introduced by the confuſion of thoſe turbulent times, made it neceſſary to revive the office and ancient diſcipline of the Cenſors[p], which had lain dormant for ſeventeen years paſt: in which

[o] Judicum culpa atque dedecore etiam Cenſorium nomen, quod aſperius antea populo videri ſolebat, id nunc poſcitur, id jam populare atque plauſibile factum eſt. *Cic. in Cæcil. Divinat.* 3.

[p] Βυλην τε γαρ εκ των ἐπιτυχοντων ανθρωπων συνεσ∫ησε Συλλα. *Dionyſ.* l. v. 57.

the

the new Cenſors, *L. Gellius* and *Cn. Cornelius Lentulus*, exerciſed their power with more ſeverity, than had ever been known before[q]: for they left ſixty-four out of the roll of the Senate; of whom *C. Antonius* was one, who yet, within ſeven years after, was choſen Conſul with *Cicero*; and *P. Lentulus* another, who had been Prætor and Conſul, and was choſen Prætor again after this diſgrace, and in that office was put to death for conſpiring with *Catiline*. *Cicero* ſpeaks of ſeveral more, who were degraded by the ſame Cenſors, for a charge of theft, and of bribery and extortion in their judicial capacity; who yet were all reſtored to the Senate, by being acquitted afterwards of thoſe very crimes in a legal trial[r].

The ſeverity of this Cenſorſhip furniſhed a pretext not long after to *P. Clodius*, for procuring a law, to prohibit the Cenſors, from ſtriking any one out of the roll of the Senate, or diſgracing him in any manner, upon the report of common fame, or the notoriety of any crime, "till he had been formally accuſed, and "found guilty by the common judgment of both the

[q] Etiam Cenſorium nomen, quod aſperius antea populo videri ſolebat, id nunc poſcitur, &c. *ut ſup. Cic. Div. in Verr.* 3.

[r] Quos autem ipſe L. Gellius & Cn. Lentulus, duo Cenſores—furti & captarum pecuniarum nomine notaverunt: ii non modo in Senatum redierunt, ſed etiam illarum ipſarum rerum judiciis abſoluti ſunt. *Cic. pro Cluent.* 42.

" Cenſors[s]." *Cicero* frequently inveighs againſt this law, and reflects ſeverely on *Clodius*, for abridging or aboliſhing a ſalutary power, that had ſubſiſted four hundred years, and was neceſſary to ſupport the credit and dignity of the Senate[t]. But in this, perhaps, he was influenced rather by his reſentment againſt his inveterate enemy, the author of it, than by any iniquity of the law itſelf, which ſeems to be a reaſonable one in a free ſtate.

From all theſe facts and teſtimonies we may collect, what was the proper power of the Cenſors in the creation of Senators. For in the ordinary way of making them, they had nothing more to do, than to enroll the names of thoſe, who had borne the public offices ſince the laſt enrolment of the Senate: and to degrade them, was to leave them only out of the roll, when by the notoriety of ſome crime, of which the people was finally to judge, they had rendered themſelves unworthy of a place in that venerable body.

[s] Τοις δε Τιμηταις απηγορευσε, μητ' απαλειφειν εκ τινος τελους, μητ' ατιμαζειν μηδενα, χωρις ἡ ειτις παρ' αμφοτεροις σφισι κριθεις ἁλοιη. *Dio.* l. xxxvii. p. 66. E.

[t] Ab eodem homine, in ſtupris inauditis, nefariiſque verſato, vetus illa magiſtra pudoris & modeſtiæ, ſeveritas cenſoria ſublata eſt. *In Piſon.* 4. *pro Sext.* 25.

† That

That they had no original right of creating them, appears from the caſe of the *Flamen Dialis*; who, upon the oppoſition made to his claim, did not ſeek his redreſs from the Cenſors, but the Tribuns; that is, from the people, as the ſovereign judges of the affair. Laſtly, the deſcription given by *Cicero*, of the Cenſorian juriſdiction in all its branches, (from which your Lordſhip, and all indeed, who write on the Queſtion, draw the notion of their power,) is exactly conformable to what I have been maintaining: for he aſſigns them no part in the creation of Senators, nor any other power over them, than what flowed from their right of inſpecting and correcting the manners of all the citizens. "Let them go-"vern, ſays he, the morals of the city, and leave no "ſtain or ſcandal in the Senate[v]."

But I muſt not forget to acknowledge, that, though the public magiſtrates had a right to a place in the Senate, by virtue of their office, yet they could not, in a ſtrict ſenſe, be eſteemed complete Senators, till they had been enrolled by the Cenſors at the next Luſtrum, which was neceſſary to give them legal poſſeſſion. This is the ſole ground on which the writers aſcribe an abſo-

[v] Mores populi regunto: probrum in Senatu ne relinquunto. *Cic. de Leg.* iii. 3.

lute power to the Cenſors in the caſe of making Senators: not conſidering, that the enrollment was but a matter of form that followed of courſe at each Cenſus; and was never denied, or could be denied to any, but on account of ſome notorious vice or immorality: and that a right of creating and degrading Senators, by a plenitude of power, is a quite different thing, from that of enrolling thoſe alone, whom others had created, or rejecting them for a charge of crimes, which had rendered them unworthy of that honor, to which they had been raiſed by a different authority. For the part of enrolling or ſtriking out the names of Senators was all that the Cenſors had to do in this affair, in which they were ſtill ſubject to the final judgment of the people, and liable to be obſtructed in the diſcharge of it, by any of the Tribuns [u].

Beſides this taſk of enrolling the Senators, and inſpecting their manners, it was a part likewiſe of the Cenſorian juriſdiction, "to let out to farm all the lands, "revenues, and cuſtoms of the Republic; and to con- "tract with artificers, for the charge of building and "repairing all the public works and edifices, both in

[u] *Dio.* l. xxxvii. p. 33. D. Cn. Tremellius Tribunus, quia lectus non erat in Senatum, interceſſit. *Liv.* xlv. 15.

"*Rome*

"*Rome* and the colonies of *Italy*[w]." Now, in this branch of their office, it is certain, that they acted merely under the authority of the people, and were prohibited by law, "to let out any of the revenues, "except in the roſtra, under the immediate inſpection, "and in the very preſence of the people[x]." In conſequence of which, when *Fulvius Flaccus*, one of the Cenſors, was ordering ſome great and expenſive works, more arbitrarily than the law would regularly warrant, his collegue *Poſtumius* refuſed to join with him, and declared, that he would not engage himſelf in any contracts to the waſte of the public treaſure, "without an "expreſs order of the Senate and the people, whoſe "treaſure it was[y]." If the Cenſors then, in theſe inferior articles of their adminiſtration, were obliged to

[w] Cenſores interim Romæ—Sarta tecta acriter & cum ſumma fide exegerunt, viam e foro Boario ad Veneris, & circa foros publicos & ædem Matris magnæ in Palatio faciendam locaverunt. Vectigal etiam novum ex Salaria annona ſtatuerunt, &c. *Liv.* xxix. 37. *Polyb.* l. vi. 464. C.

[x] Cenſoribus vectigalia locare, niſi in conſpectu populi Romani non licet. *Cic. de Leg. Agrar.* i. 3. Vectigalia nuſquam locare licet, niſi ex hoc loco [ex Roſtris], hac veſtrum frequentia. *Ib.* ii. 21.

[y] Alter ex iis Fulvius Flaccus (nam Poſtumius nihil niſi Senatus Romani populive juſſu, ſe locaturum ipſorum pecunia dicebat) Jovis ædem Piſauri & Fundis, &c. *Liv.* xli. 27.

act under the immediate controul and inſpection of the people, and as miniſters only of the people's will, we may reaſonably infer, that they could not act in any other capacity, in the more important affair, of making and unmaking Senators.

Again, in the general cenſus and review of the city, held by them every five years, though every ſingle citizen was particularly ſummoned and enrolled by name in his proper tribe, as a freeman of *Rome*; yet that ſolemn enrollment, as *Cicero* tells us, "did not confirm "any man's right to a citizenſhip, but ſignified only, "that he had paſſed for a citizen at that time[z]." Becauſe the proper power of determining that right reſided always in the people[a]: whence we may conclude likewiſe, by a parity of reaſon, that the Cenſorian roll of the Senate did not either confer or take away any one's right to that high order, unleſs it were confirmed, either by the preſumed conſent, or expreſs command of the *Roman* people.

[z] Sed quoniam Cenſus non jus civitatis confirmat, ac tantummodo indicat, eum, qui ſit Cenſus, ita ſe jam tum geſſiſſe pro cive. *Cic. pro Arch.* 5.

[a] Mutines etiam civis Romanus factus, rogatione ab Tribunis pl. ex auctoritate Patrum, ad plebem lata. *Liv.* x. 52.

But

But though the magiſtrates of the city had a right to a place and vote in the Senate, as well during their office as after it, and before they were put upon the roll by the Cenſors, yet they had not probably a right to ſpeak or debate there on any queſtion, at leaſt in the earlier times of the Republic. This was the original diſtinction between them, and the proper Senators: which, as your Lordſhip takes notice, was obſerved in the *formule* of the Conſular edict, ſent abroad to ſummon the Senate, which was directed "to all Senators, "and to thoſe, who had a right to vote in the Senate[b]." From which diſtinction, theſe laſt, who had only a right to vote, were called, by way of ridicule, *Pedarians*; becauſe they ſignified their votes by their feet, not their tongues; and upon every diviſion of the houſe, went over to the ſide of thoſe, whoſe opinion they approved[c]. It was in alluſion to this old cuſtom,

[b] Conſules edixerunt, quoties in Senatum vocaſſent, uti Senatores, quibuſque in Senatu dicere ſententiam liceret, ad portam Capenam convenirent. *Liv.* xxiii. 32. *it.* xxxvi. 3. *Feſtus in voc.* Senatores.—*A. Gell.* l. iii. 18.

[c] Non pauci ſunt, qui arbitrantur Pedarios Senatores appellatos, qui ſententiam in Senatu non verbis dicerent, ſed in alienam ſententiam pedibus irent, &c. Vid. *A. Gell. ibid.*

Ita appellatur, quia tacitus tranſeundo ad eum, cujus ſententiam probat, quid ſentiat, indicat. *Feſtus in Pedarius.*

which

which ſeems however to have been wholly dropt in the later ages of the Republic, that the mute part of the Senate continued ſtill to be called by the name of *Pedarians*, as we learn from *Cicero*, who, in giving an account to *Atticus*, of a certain debate and decree of the Senate upon it, ſays, " that it was made with the eager " and general concurrence of the *Pedarians*, though " againſt the authority of all the Conſulars [d]."

From the diſtinction, ſignified above, in the ordinary *formule* of ſummoning the Senate, it may not perhaps be improbable, that on certain urgent occaſions, in which an extraordinary diſpatch or ſecrecy was required in their councils, the latter part of the edict was left out; and none but the proper Senators called to the more ſecret deliberations. If this was the caſe, as ſome of the learned have imagined [e], it will clear up the difficulty of that known ſtory, told by *Valerius Maximus*, and referred to by your Lordſhip, which has greatly perplexed all thoſe who have treated this queſtion, and is thus related: " *Q. Fabius Maximus*, " on his return from the Senate, happening to meet with

[d] Eſt enim illud S. C. ſumma Pedariorum voluntate, nullius noſtrum auctoritate factum. *Ad Att.* i. 19.

[e] *P. Manutius de Sen. Rom.*—Vid. *Pighii Annales*, tom. i. p. 72.

" *P. Craſſus*,

" *P. Craſſus*, told him, by way of news, what had been " reſolved ſecretly about the *Punic war*, remembering, " that *Craſſus* had been *Quæſtor* three years before, " and not knowing, that he had no right to be in the " Senate, becauſe he had not yet been put upon the " roll of the Cenſors: for which *Fabius* was ſeverely " reprimanded by the Conſuls[1]." For *Valerius* is certainly miſtaken in affirming, that the Quæſtors had no right to an admiſſion into the Senate, till they were enrolled by the Cenſors: ſincè it appears from unqueſtionable facts and teſtimonies, drawn from the practice, at leaſt, of the later ages of the Republic, that they had not only an entrance and vote in it, but a free liberty of ſpeaking alſo, or debating on all queſtions: ſo that I ſee no other way of accounting for the excluſion of *Craſſus*, after he had been Quæſtor, or the offence committed by *Fabius*, in giving him part of the deliberation, but that it was one of that *ſecret* kind, to which the Conſuls had ſummoned only the *proper* Senators;

[1] *Val. Max.* ii. 2. Q. Fabius Maximus tantummodo, & is ipſe per imprudentiam, de tertio Punico bello indicendo quod ſecreto in curia erat actum, P. Craſſo, rus petens, domum revertenti in itinere narravit, memor eum triennio ante Quæſtorem factum, ignaruſque nondum à Cenſoribus in ordinem ſenatorum allectum: quo uno modo his, qui jam honores geſſerant, aditus in curiam dabatur. Sed quamvis honeſtus error Fabii eſſet, vehementer tamen à conſulibus objurgatus eſt. *De Magiſt. & Ordin. Officiis.*

of

of which number *Fabius*, by miſtake, took *Craſſus* to be [z].

But that the Quæſtors had a direct admiſſion into the Senate, and were ſtiled and treated as Senators, and had a liberty alſo of ſpeaking in their turn, as well as the reſt, is evident, as I have ſaid, from many clear facts and teſtimonies. For inſtance, *C. Marius*, as the ſame *Valerius* ſays, not being able to procure any magiſtracy in *Arpinum*, his native city, ventured to ſue for the Quæſtorſhip at *Rome*, which he obtained at laſt "after many repulſes, and ſo forced his way into the "Senate, rather than came into it [a]."

[z] *J. Capitolinus* mentions a decree of the Senate of this *ſecret kind*, which he calls *S. C. tacitum*, and ſays, that the uſe of them among the ancients was derived from the neceſſities of the public, when, upon ſome imminent danger from enemies, the Senate was either driven to ſome low and mean expedients, or to ſuch meaſures as were proper to be executed before they were publiſhed, or ſuch as they had a mind to keep ſecret even from friends; on which occaſions they commonly recurred to a *tacit decree*, from which they excluded their clerks and ſervants, performing that part themſelves, leſt any thing ſhould get abroad. *Capitolin. de Gordianis*, c. 12. In the early times of the Republic there are ſeveral inſtances mentioned by hiſtorians, of ſuch private meetings of the Senate, ſummoned by the Conſuls to their own houſes, to which none but the old or proper Senators were admitted, and of which the Tribuns uſually complained. Vid. *Dionyſ.* l. x. 40. xi. 55. 57.

[a] Patientia deinde repulſarum, irrupit magis in Curiam, quam venit. *Id.* l. vi. 9. 14.

Cicero after he had been *Quæſtor*, being elected *Ædile*, as ſoon as he was capable, declares in one of his ſpeeches, how, by that advancement, he had gained an "higher rank, and earlier turn of delivering his opi-"nion in the Senate[i]:" which implies, that he had a right of ſpeaking there before, when *Quæſtor*, though later only in point of time, and after the other magiſtrates. In another ſpeech, he ſtiles *P. Clodius*, a Senator, while he was only of *Quæſtorian* rank[k]: and in a congratulatory letter to *Curio* at *Rome*, upon his election to the Tribunate, taking occaſion to renew a requeſt, which he had made to him in former letters, when he had only been *Quæſtor*, he ſays, "that he had aſked "it of him before, as of a Senator of the nobleſt birth, "and a youth of the greateſt intereſt, but now of a "Tribun of the people, who had the power to grant "what he aſked[l]." Laſtly, *M. Cato*, as *Plutarch* writes, when he was *Quæſtor* of the city, never failed to attend the Senate, for fear that any thing ſhould paſs in his abſence to the detriment of the public trea-

[i] Antiquiorem in Senatu ſententiæ dicendæ locum. *In Verr.* v. 14.

[k] Adoptat annos viginti natus Senatorem. *Pro Dom.* xiii. 14.

[l] Itemque petivi ſæpius per litteras, ſed tum quaſi a Senatore nobiliſſimo—nunc a Tribuno plebis. *Ep. Fam.* ii. 7.

ſure, of which he was then the guardian[n]: which ſeems to imply, that he was not only a Senator in virtue of his office, but had the liberty of acting or ſpeaking there, if he had found occaſion.

I am, &c.

[n] *Plutarch. in vit. Caton.*

Cicero likewiſe in reckoning up the number of Senators, who were in *Pompey*'s camp, diſtinguiſhes them by their ſeveral ranks, of *Conſular*, *Prætorian*, *Ædilitian*, *Tribunitian*, and *Quæſtorian Senators*. *Philip.* xiii. 14.

LETTER XII.

Dr. Middleton to Lord Hervey.

ГЕЛЛЕК XII°

LETTER XII.

Dr. Middleton to Lord Hervey.

MY LORD,

BEFORE I finiſh my argument, I muſt add a word or two, on what your Lordſhip has incidentally touched, concerning the number of the Senate, and the qualifications of a certain age, eſtate, *&c.* required for it by law.

As to its number, your Lordſhip ſuppoſes it to have been limited to three hundred, from the firſt Conſuls, to the time of the *Gracchi*. But this muſt not be interpreted ſtrictly: it generally had that number, or near it; and when, through any accident, it became

remarkably deficient, was filled up again to that complement by an extraordinary creation. But as the number of the public magiſtrates increaſed with the increaſe of their conqueſts and dominions, ſo the number of the Senate, which was ſupplied of courſe by thoſe magiſtrates, muſt be liable alſo to ſome variation.

Sylla, as we have ſeen above, when it was particularly exhauſted, added three hundred to it at once from the Equeſtrian order: which might probably raiſe the whole number to about five hundred: and in this ſtate it ſeems to have continued, till the ſubverſion of their liberty by *Julius Cæſar*. For *Cicero*, in an account of a particular debate, in one of his letters to *Atticus*, mentions four hundred and fifteen to have been preſent at it, which he calls a *full houſe* [a].

That there was a certain age required for a Senator, is often affirmed by the ancient writers, though none of them have expreſsly ſignified, what it was. The legal age for entering into the military ſervice, was

[a] Cum decerneretur frequenti Senatu—ut Conſules populum cohortarentur ad rogationem accipiendam, homines ad xv. Curioni nullum S. C. facienti aſſenſerunt; ex altera parte facile cccc. fuerunt. *Ad Att.* l. i. 14.

ſettled

ſettled by *Servius Tullius* at ſeventeen years [b]: and we learn from *Polybius*, "that it was neceſſary to "ſerve ten years in the wars, before a man could "pretend to any civil magiſtracy [c]." This fixes the proper age of ſuing for the Quæſtorſhip, which was the firſt ſtep of honour, to the twenty-eighth year: and as this office gave an admiſſion into the Senate, it leads us alſo to the Senatorian age: which, on this very ground, ſome of the learned, and among them *Sigonius*, have placed at twenty-eight years [d]. And their opinion is further ſtrengthened, or demonſtrated rather, as your Lordſhip ſeems to think, by that extraordinary grant of the Senatorian dignity to young *Auguſtus*, by which it was decreed, that his pretenſions to future honours ſhould be conſidered, as if he had been Quæſtor the year before [e].

Some writers indeed, on the authority of *Dion Caſſius*, have imagined it to be twenty-five years: not reflecting, that *Dio* mentions it there as a regu-

[b] *A. Gellius*, l. x. 28.

[c] *Polyb. de Inſtitut. rei milit.* l. vi. p. 466.

[d] *Sigon. de Ant. jur. Civ. Rom.* ii. 2.

[e] *Cic. Philip.* v. 17.

lation

lation only, propoſed to *Auguſtus*, by his favourite *Mæcenas* [1].

But for my part, as far as I am able to judge, from the practice of the Republic in its later times, I take the *Queſtorian* age, which was the ſame with the *Senatorian*, to have been thirty years complete. For though the Queſtorſhip might be held at twenty-ſeven; yet few obtained it ſo early; or if they did, the Cenſus would ſeldom happen before they were thirty. And till their enrollment, they were not complete Senators.

Cicero, who declares in ſome of his ſpeeches, that he had acquired all the honours of the city, without a repulſe in any, and each in his proper year, or as ſoon as he could pretend to it by law, yet did not obtain the *Quæſtorſhip*, till he had paſſed through his thirtieth year [2]: and when *Pompey* was created *Conſul*, in an extraordinary manner, and by a ſpecial diſpenſation, in his thirty-ſixth year, without having

[1] Vid. *Dio.* l. lii. p. 477. *Lipſ. de magiſtratibus Rom.*

[2] *Cicero* was born, *A. U.* 647, obtained the Quæſtorſhip, *A. U.* 677, which he adminiſtered the year following in *Sicily*. See Life of *Cicero*, vol. i. p. 57. Quarto. *Pighii Annales.*

borne

borne any of the ſubordinate dignities, *Cicero* obſerves upon it, that he was choſen into the higheſt magiſtracy, before he was qualified by the laws to hold even the loweſt [h]: by which he means the *Ædileſhip*; which was the firſt office that was properly called a magiſtracy, and what could not regularly be obtained, till after an interval of five years from the *Quæſtorſhip*.

This notion ſeems to be particularly confirmed alſo by the tenor of certain laws given by *C. Claudius* to the *Haleſini*, a people of *Sicily*, and by *Pompey* to the *Bithynians*, concerning the regulation of the Senate of thoſe cities; "that none ſhould be admitted into "them under the age of thirty;" which was taken moſt probably from the uſage of *Rome*. For the *Haleſini*, as the ſtory is told by *Cicero*, "having "great diſputes among themſelves, about the choice "of their Senators, petitioned the Senate of *Rome*, "to give them ſome laws concerning it. Upon "which the Senate decreed, that their Prætor *C.* "*Claudius* ſhould draw up ſuch laws for them;"

[h] Quid tam ſingulare, quam ut legibus ſolutus ex S. conſulto Conſul ante fieret, quam ullum alium magiſtratum per leges capere licuiſſet. *Cic. pro lege Manil.* 21.

on which *Cicero* remarks, "that laws given by ſuch "a magiſtrate, ſo authorized, ought to be conſidered "as the laws of the people and Senate of *Rome*." "In theſe laws," ſays he, "*Claudius* enacted many "things concerning their age; that none, under "thirty years; none, who followed any trade; "none, who had not an eſtate to a certain value, "ſhould be capable of the Senate." *Scipio* likewiſe, as he tells us, gave laws of the ſame kind, and with the ſame clauſes in them, to the people of *Agrigentum*: and laſtly, *Pliny* mentions a law of *Pompey the Great*, given on a like occaſion to the *Bithynians*, enacting, "that none ſhould hold any "magiſtracy, or be admitted into their Senate, under "the age of thirty; and that all, who had borne "a magiſtracy, ſhould be of courſe in the Senate[k]."

[i] C. Claudius—leges Haleſinis dedit: in quibus multa ſanxit de ætate hominum, ne qui minor triginta annis natu, &c.

Agrigentini de Senatu cooptando, Scipionis leges antiquas habent, in quibus & eadem illa ſancta ſunt, &c. *In Verr.* ii. 49.

[k] Cautum eſt, Domine, Pompeii lege, quæ Bithynis data eſt, ne quis capiat magiſtratum, neve ſit in Senatu, qui minor annis xxx ſit, & ut qui ceperint magiſtratum, ſint in Senatu. *Ad Trajan. Ep.* l. x. 83.

Graviſſimum autem eſt, cum ſuperior factus ſit ordine, inferiorem eſſe fortuna. *Fam.* xiii. 5.

All

All which ſanctions clearly indicate, from what ſource they were derived; and ſhew, what every one would readily imagine, that a *Roman* governor would naturally give them *Roman* laws [l].

In this diverſity of opinions, I cannot take upon me to pronounce any thing with certainty. *Cicero* however informs us, "that theſe laws, to regulate the "age of magiſtrates, were not very ancient; and that "they were made, to check the forward ambition of "the young Patricians, and to put all the citizens "upon a level in the purſuit of honours [m]." *Livy* ſays, "that *L. Villius*, a Tribun of the people, was "the firſt, who introduced them, *A. U.* 573, and "acquired by it the ſurname of *Annalis* [n]." But long before this, we find the intimations of ſuch laws or cuſtoms, as then ſubſiſted in *Rome* [o]. And in the very early times of the Republic, *A. U.* 260, when

[l] Vid. *Zamoſc. de Sen. Rom.* c. 8.

[m] Itaque majores noſtri, veteres illi admodum antiqui, leges annales non habebant, &c. *Philip.* v. 17.

[n] Eo anno rogatio primum lata eſt ab *L. Villio*, Tribuno plebis, quot annos nati quemque magiſtratum peterent, caperentque, inde cognomen familiæ inditum, ut annales appellarentur. *Liv.* xl. 43.

[o] *Liv.* xxxii. 7.

the Tribuns were firſt created, the Conſuls declared in the Senate, that they would ſhortly correct the petulance of the young nobles, by a law, which they had prepared, to ſettle the age of Senators [p].

There was alſo, as your Lordſhip has obſerved, a moneyed qualification, or a certain eſtate, required for a Senator, proper to ſupport his rank; the proportion of which was ſettled by the law; though we no where find, when it was firſt inſtituted, nor even what it was, in any author before *Suetonius:* from whom we may collect, that it was ſettled at eight hundred *ſeſtertia*, before the reign of *Auguſtus* [q]: which are computed to amount to between ſix and ſeven thouſand pounds of our money; and muſt not be taken, as it is by ſome, for an annual income, but for the whole eſtate of a Senator, real and perſonal, as eſtimated by the ſurvey and valuation of the Cenſors.

[p] Αλλα και εις το λοιπον αυνειρξομεν ατων ακοσμισαν νομῳ, ταξαντες αριθμον ετων ὁν δεηςει τȣς ϐȣλευοντας εχειν. *Dionyſ.* l. vi. 66.

Senatorium gradum cenſus adſcendere fecit.

[q] Senatorum cenſum ampliavit [Auguſtus]; ac pro octingentorum millium ſumma, duodecies H. S. taxavit, ſupplevitque non habentibus. *Sueton. in Aug.* c. 41.

This

This proportion of wealth may ſeem perhaps too low, and unequal to the high rank and dignity of a *Roman* Senator; but it muſt be conſidered only as the loweſt, to which they could be reduced: for whenever they ſunk below it, they forfeited their ſeats in the Senate. But as low as it now appears, it was certainly ſufficient, at the time when it was firſt ſettled, to maintain a Senator ſuitably to his character, without the neceſſity of recurring to any trade or ſordid arts of gain, which were likewiſe prohibited to him by the laws [r].

Your

[r] Inviſus Patribus ob novam legem, quam Q. Claudius Trib. pl. adverſus Senatum, uno Patrum adjuvante, C. Flaminio, tulerat, ne quis Senator, quive Senatoris pater fuiſſet, maritimam navem, quæ pluſquam trecentarum amphorarum eſſet, haberet: id ſatis habitum ad fructus ex agris vectandos; quæſtus omnis Patribus indecorus viſus. *Liv.* xxi. 63. Noli metuere, Hortenſi, ne quæram, qui licuerit navem ædificare Senatori. *Cic. Verr.* v. 18.

N. B. It is certain, that the Senators generally poſſeſſed a much larger proportion of wealth, than what is computed above: for in the fifth year of the ſecond Punic war, *A. U.* 539, it was decreed by the Senate, that every citizen, who, at the preceding cenſus, or general taxation of the city, was found to be worth from 400 *l.* to 800 *l.* of our money, ſhould furniſh one ſailor with ſix months pay towards manning the fleet; that thoſe, who were rated from 800 *l.* to 2,400 *l.* ſhould furniſh three ſailors, with a year's pay; that thoſe, who were

rated

Your Lordſhip does not think the regulation to have been very ancient. And indeed there ſeems great reaſon to imagine, that in thoſe earlier days, when the chief magiſtrate was ſometimes taken from the plough [s]; and when *Corn. Rufinus*, who had been Dictator and twice Conſul, was expelled the Senate by *C. Fabricius* the Cenſor, *A. U.* 477, "because he had ten pounds of ſilver plate in his "houſe [t]," no particular regard could be paid to wealth, in conferring the Senatorian dignity. And we find *Pliny* accordingly, lamenting the unhappy change, "when their Senators, their Judges, and their "Magiſtrates, came to be choſen by the value of their "eſtate, ſince, from that moment, all regard began to "be loſt for every thing, that was truly eſtimable and "laudable in life [v]."

rated from 2,400 *l.* to 8,000 *l.* ſhould furniſh five ſailors; that all, who were rated above that ſum, ſhould furniſh ſeven; and that all Senators ſhould furniſh eight, with a year's pay. *Liv.* xxiv. 11.

[s] Si illis temporibus natus eſſes, cum ab aratro arceſſebantur, qui Conſules fierent. *Cic. pro Roſc. Amer.* 18.

[t] Ab eo Cornelium Rufinum duobus Conſulatibus & Dictatura ſpecioſiſſime functum, quod decem pondo argentea vaſa comparaſſet, in ordine Senatorio retentum non eſſe. *Val. Max.* l. ii. 9. *A. Gell.* xvii. 21.

[v] Poſtquam Senator cenſu legi cæptus—peſſumiere vitæ prætia—*Plin. Proœm. in lib.* 14. *Hiſt. N.*

Yet,

Yet, *Sigonius*, whom your Lordſhip prefers to all the writers on *Roman* affairs, is of opinion, that the diſtinction "of a Senatorian Cenſus, or an eſtate ne-"ceſſary to a Senator, was very ancient; and was in "uſe, if not from the beginning, yet undoubtedly "before the war with *Hannibal*[u];" which he confirms by ſome teſtimonies of Hiſtory. And his opinion is made the more probable by the alluſions, that we meet with in authors, to old laws, prohibiting all kinds of trade, or arts of gain, to a Senator, as below his rank [v].

In the univerſal poverty of the firſt ages, the Cenſus of a Senator muſt needs have been very low; but after they had carried their conqueſts beyond ſea, and the city was become the center of the wealth of the conquered nations; as the vaſt increaſe of money in *Rome* would create a proportionable increaſe of power and authority to its owners; ſo a larger ſhare of it became neceſſary to the condition of a Senator, to ſupport his dignity, and prevent the

[u] *Zamoſcius de Sen. Rom.* c. 10. of which Book *Sigonius* was the true author.

[v] *Liv.* xxi. 63. vid. ſup.

temptation

temptation of recurring to unlawful arts, or proſtituting his power for private advantage, againſt the public intereſt.

This qualification of an eſtate ſeems to be alluded to by *Cicero*, in one of his letters, written in the time of *J. Cæſar*'s adminiſtration, where he begs of one of his friends then in power, "not to ſuffer cer-"tain lands of *Curtius* to be taken from him for the "uſe of the ſoldiers, becauſe, without that eſtate, he "could not maintain the rank of a Senator, which "*Cæſar* had conferred on him[x]."

It appears likewiſe from what has been dropt in the courſe of my argument, that there was ſome law or cuſtom ſubſiſting from the earlieſt times, concerning the extraction and deſcent of Senators; injoining, that it ſhould always be ingenuous: and as their morals were to be clear from all ſtain of vice, ſo their birth likewiſe, from any ſtain of baſe blood. In conſequence of which, when *Appius Claudius*, in his Cenſorſhip, attempted to introduce the grandſons of freed ſlaves into the Senate, they were all, as we have ſeen above, immediately turned out again.

[x] Hoc autem tempore eum Cæſar in Senatum legit: quem ordinem ille, iſta poſſeſſione amiſſa, vix tueri poteſt. *Ep. Fam.* xiii. 5.

For

For the *Romans* were ſo particularly careful to preſerve even their common citizens from any mixture of ſervile blood, that they prohibited all marriages between them, and ſlaves made free, or their children. And it was decreed, as a ſpecial privilege or reward to one *Hiſpala*, of libertine condition, for her diſcovery of the impieties of the *Bacchanalian* myſteries, *A. U.* 567, "that a citizen might marry "her without any diſgrace, or diminution of his "rights [y]."

Theſe diſtinctions indeed began to be diſregarded towards the end of the Republic, with reſpect to the ordinary citizens, but were kept up to the laſt, with regard to the Senate. For *Cn. Lentulus* in his Cenſorſhip above-mentioned, turned *Popillius* out of the Senate, as being the grandſon of a ſlave, made free; though he allowed him his rank at the public ſhews, with all the outward ornaments of a Senator [z]. And the *Papian* law, made in the end of *Auguſtus*'s

[y] Utique ei ingenuo nubere liceret, neu quid ei qui eam duxiſſet, ob id fraudi ignominiæve eſſet. *Liv.* xxxix. 19.

[z] Nam Popillium, quod erat Libertini filius, in Senatum non legit: locum quidem Senatorium ludis, & cetera ornamenta reliquit, & eum omni ignominia liberat. *Cic. pro Cluen.* 47.

reign, permits all the citizens, "excepting Senators "and their children, to take wives of libertine con- "dition [a]."

Theſe were ſome of the laws, which the people preſcribed to the Cenſors in the enrollment of new, or the omiſſion of old Senators: and when we read of any left out, without an intimation of their crime, it might be owing probably, in ſome meaſure, to the want of one or the other of theſe legal or cuſtomary qualifications.

The Cenſors continued in their office for eighteen months: ſo that ſuppoſing them to be choſen but once in five years, the office, as your Lordſhip obſerves, muſt lie dormant for three years and an half. This indeed is agreeable to what the generality of writers have delivered to us of the *Cenſus*; that it was celebrated every fifth year: and as it was accompanied always with a luſtration of the people, ſo the word *Luſtrum* has continually been taken, both by the ancients and moderns, for a term of five years. Yet when we enquire into fact, or the real ſtate of the caſe, we ſhall find no good ground for fixing ſo preciſe a ſignification

[a] Vid. *Pighii Annal. A. U.* 761.

to it; but on the contrary, that the *Cenſus* or *Luſtrum* was held, for the moſt part, irregularly and uncertainly, at very different and various intervals of time, from three years to nineteen, as the particular exigencies of the State required it. This is evident, not only from the teſtimonies of the old writers, but from a more authentic monument of the thing, the *Faſti Capitolini*, or the fragments of old marbles, exhibiting the ſucceſſion of the *Roman* magiſtrates, with a ſummary of their acts, from the earlieſt time down to *Auguſtus*: which fragments are ſtill preſerved in the Capitol at *Rome*.

For example, *Servius Tullius*, who firſt inſtituted the Cenſus and Luſtrum, and afterwards held four of them [b], began his reign, *A. U.* 175, and reigned forty-four years. We have no certain account in what year he firſt made the regulation, though ſome authors probably conclude it to have been in his tenth or twelfth year. *Tarquinius Superbus*, who ſucceeded him, reigned twenty-five years, and held no Cenſus at all.

The Conſuls *P. Valerius* and *T. Lucretius* revived the inſtitution of *Servius*, and held the fifth Luſtrum,

[b] *Val. Max.* iii. 4.

A. U. 245: and the Capitoline marbles, which are defective through the firſt ſeven Luſtrums, mark the eighth to have happened, *A. U.* 279; ſo that the three firſt, which were held by the Conſuls, carry us through an interval of thirty-four years.

The Cenſors were created *A. U.* 311, and in that year they celebrated the eleventh Luſtrum; which gives alſo near the ſame interval to the three laſt, which had been held by the Conſuls.

The twentieth Luſtrum, according to the Capitoline marbles, falls *A. U.* 390: whence we ſee, that under the Cenſors, who were created for the very purpoſe of adminiſtring the Cenſus and Luſtrations of the people, the nine firſt of their Luſtrums, one with another, take up each of them very near nine years.

The ſeventy-firſt Luſtrum, and the laſt during the liberty of the Republic, was held by the Cenſors *Appius Claudius* and *L. Piſo*, *A. U.* 703. So that if we compute from the eleventh, which was the firſt held by the Cenſors, *A. U.* 311, to the laſt by *Appius Claudius*, the intervening ſixty will each of them contain about ſix years and an half [c].

[c] Vid. *Onupli Panvinii Commentar. in Faſtos.* It. *Pighii Annales.*

This

This is the real ſtate of the caſe, as it is deduced from the moſt authentic records: from which we ſee, that though time and cuſtom have fixed the notion of a *Quinquænnium* or term of five years, to the word *Luſtrum*, yet there is no ſufficient ground for it in fact, or the nature of the thing.

I have now drawn out every thing, which I took to have any relation to my ſubject, or to be of any uſe towards illuſtrating the genuine ſtate of the *Roman* Senate, from its firſt inſtitution, to the oppreſſion of its liberty: and am perſuaded, if I do not flatter myſelf too much, that through every period of its hiſtory, under the *Kings*, the *Conſuls*, and the *Cenſors*, I have traced out from the beſt authorities, one uniform ſcheme of the people's power and abſolute right over this affair, from one end to the other. But as I began this enquiry with the ſame notion, with which I now end it, ſo like all others, who ſet out with an hypotheſis, I might poſſibly have ſome biaſs upon me in the progreſs of it, without being ſenſible of it myſelf, and have given a greater force to ſome facts, than they will eaſily bear, in order to draw them to my particular ſenſe. If this be the caſe, as I am ſure, that it will not eſcape your Lordſhip's

obſervation, ſo I ſhall have a pleaſure in being corrected by your leſs biaſſed judgment; ſince in this, as well as in all my other enquiries, Truth is the only fruit that I ſeek, or wiſh to reap from my labour.

I am, &c.

LETTER XIII.

Lord Hervey to Dr. Middleton.

LETTER XIII.

Lord Hervey to Dr. Middleton.

DEAR SIR, *Kenſington, Aug.* 20, 1735.

IN endeavouring to maintain what I have advanced, I ſhall perhaps, like moſt other diſputants (or at leaſt, like moſt who diſpute with you), only ſhew my obſtinacy, or betray my ignorance, or both: and yet I cannot help indulging that propenſity every body feels to ſupport his own opinion, ſo far, as to trouble you with one word or two by way of reply to the objections you have made to my ſyſtem, and the arguments you have urged in ſupport of your own.

You have ſtated very fairly the difference there is between your hypotheſis and mine on this queſtion, one omiſſion only excepted; which is, that notwithſtanding the power I ſuppoſe, firſt in the Conſuls, and afterwards in the Cenſors, to create Senators, and ſupply the vacant ſeats of that Body; yet from the time the annual magiſtrates were inſtituted; as they had a right immediately on their creation to a ſeat and vote in the Senate, ſo I admit they had a claim too at the next Cenſus to be enrolled by the Cenſors; and could only have that claim rejected, or put by, in the ſame manner, that a Senator, already enrolled, might be turned out of the Senate. But in my opinion, it is very evident from all Hiſtorians, not only by their general aſſertions, but by many particular examples, that the Cenſors had an authority incidental to their reforming power, that made them, without ſome flagrant abuſe of that power, maſters of the ſeats of all Senators, either already enrolled, or to be enrolled.

And when the annual magiſtrates were not ſufficient to ſupply the many vacancies, made by natural and violent deaths, in the Senate, I imagine too, and think it clear from ſeveral inſtances in ſeveral Hiſtories,

ries, which I have quoted in my former Letters, that the Cenſors did ſupply thoſe remaining vacancies at their diſcretion.

In ſupport of my ſyſtem, I have, as you yourſelf admit, all the Latin authors on my ſide: you therefore combat not the ſenſe of the evidence I have produced, but the credit of my witneſſes; and allow the one to be explicit, though you do not acknowledge the other to be ſatisfactory.

And in order to invalidate the weight of the authors I have cited, to back my ſuppoſitions, you would at once cut off the authority of all but *Livy*, or abſorb all their authorities into his, by ſaying the diſpute really lies only between him and *Dionyſius* of *Halicarnaſſus*; all the other Latin writers, in my liſt, being nothing more, in your opinion, than *Livy*'s copyiſts, extracters, or epitomizers, and not Hiſtorians.

In the firſt place, I muſt ſay in anſwer to this, that *Cicero* cannot come within this claſs, or under any of theſe denominations, as he wrote before *Livy*; and is undoubtedly, where he is explicit, the beſt authority one can have for any law or cuſtom among the *Romans*: and nothing can, I think, be clearer, than that *Cicero*, in that quotation we have both ſo often made

from his Oration for *Sextius*, does allow, that during the regal government, at leaſt, the Kings had the ſole authority of creating Senators. It is as plain too, in my opinion, from that paſſage in *Tully*, that the people had no farther concern, even *poſt reges exactos*, in chuſing the Senators, or ſupplying vacancies in the Senate, than virtually; that is, by chuſing magiſtrates into offices, that gave firſt a ſeat in the Senate, and conſequentially, a claim to be enrolled there; and this *Tully* in ſome other place, I think, yet more expreſsly declares, though I cannot recollect where.

Nor do we in any author read of any perſon ſtanding candidate to be choſen Senator, or of any one who is ſaid, *ambire dignitatem Senatoriam*, which we read of with regard to all other dignities whatever, conferrable by the people: and I cannot help thinking this circumſtance, though nothing more than a negative teſtimony, a ſtrong indication of the Senatorial rank never having been beſtowed by the people, detached from a magiſtracy, or farther than offices gave a title to a ſeat in the Senate.

I muſt ſay one word more in anſwer to what you have objected to the authority of all the Latin authors quoted by me, who have written ſince *Livy*; and

that

that is this; that though you may endeavour to bring the diſpute in this queſtion to the ſingle authority of *Dionyſius* on one ſide, and *Livy* on the other, yet ſure you muſt own it ſtrengthens extremely my ſide of the argument, who adhere to *Livy*'s account, that every Latin author, who wrote after theſe two Hiſtorians, either immediately or remotely in the time of the Emperors, does follow *Livy* in this particular. For as *Livy* and *Dionyſius* wrote much about the ſame time, and differently on this ſubject, it is not probable, that every ſubſequent writer ſhould have followed *Livy*, unleſs the authority of both authors had been examined, and good reaſon had appeared from the records preſerved in thoſe days, though loſt in ours, to believe that the opinion of *Livy*, in this point at leaſt, though perhaps leſs exact in others, had been founded on better authority, than that of *Dionyſius*.

You aſk me, ſince I give credit to *Dionyſius*, in preference to *Livy* in the queſtion relating to the admiſſion of the hundred *Sabins* into the Senate, why I will not do ſo too, with regard to the election of the Senators? and the reaſon is plain; becauſe I think both authors fallible, and adhere, where they differ, to

to the one or the other, according as other authors, who had better opportunities than we have, from writing nearer thoſe times, to examine the authorities of each, ſeem to decide between them.

And if you appeal to probability againſt authority, or even allow probability to be weighed at all in evidence, I cannot help ſaying, with regard to the inſtitution of the firſt hundred Senators, that to me it ſeems much more probable, that *Romulus* ſhould have made the choice of his greateſt and neareſt Council precede the inferior regulations of his State, than that he ſhould have made the regulations, and then choſen a Council; as if he had taken thoſe Counſellors to give their approbation and not their advice. Nor is it ſo natural ſure to imagine, that *Romulus* ſhould aſk the people who were fit to adviſe him; as that he ſhould chuſe himſelf thoſe, who were to counſel *him* in governing *them*.

When you inſiſt on the general argument of the ultimate power and laſt reſort on every point being lodged in the people, I admit it: from the time of the *Lex provocationis* made by *Valerius Publicola*, one of the firſt Conſuls, every thing was cognizable by the people, on an appeal to them, and ſome things they took

took cognizance of without it. But there is a very material difference between their being judges of a proper choice of the Senators, on an appeal, in the laſt inſtance, and by an extraordinary method; and their being the original chuſers of them in a common election, in the firſt inſtance, and in the ordinary method; which is all the power I contend for in the Cenſors. If the Cenſors had degraded any Knight, or any other Citizen, on an appeal to the people, the Knight or the Citizen might, I believe, have been reſtored: but it was not the ordinary method of ranging Knights or Citizens to ſummon the *Comitia Curiata*, or *Tributa*, or *Centuriata* to do it.

An appeal to the *Houſe of Lords* may reverſe a decree of the *Court of Chancery*; but it does not follow from thence, that an act of the *Lord Chancellor* is not valid, without the conſent of the Houſe of Lords; or that the ordinary deciſions of cauſes in Equity are not ninety-nine times in an hundred made there, and acquieſced under, without the Houſe of Lords having any thing to do with them.

In the caſe of the infamous and afterwards annulled promotions in the Senate by *Appius Claudius* the Cenſor, it is very plain the choice was made, not by the

people, but by him; and as plain, that it was made in the ordinary method; otherwiſe it would have been complained of as irregular as well as unfit: whereas the complaint in nowiſe ſeems to intimate his having uſurped a power that did not belong to him, but his having abuſed a power that did. Conſequently, the reſcinding that act of *Appius*, in the manner it is related by *Livy*, is ſo far from being an argument againſt my ſuppoſition of the power of the Cenſors to chuſe Senators, that I think it is the ſtrongeſt confirmation of it; eſpecially, ſince the Conſuls, who are reported, with the approbation of the people, to have annulled that act of *Appius*, are not ſaid by their authority, even on this flagrant occaſion, to have made a new liſt, but to have recurred to the old one; and to have mixed no act of theirs, or of the people's, with the act of the Cenſors, any further than preferring the roll ſettled by the former Cenſors, to that which had been ſo improperly modelled by the then Cenſor; and reſerving for the power of future Cenſors any change that was to be made in it.

But if this choice of Senators in the Cenſorſhip of *Appius* had been made in the ordinary method, and that the ordinary method was, as you ſuppoſe, by the election,

election, or even the approbation of the people aſſembled in their *Curiæ*, how can we interpret what paſſed the ſubſequent year, otherwiſe than that the people abſurdly cried out that year againſt what they themſelves had done, or approved the year before; and unjuſtly blamed *Appius* for an act of their own, or at leaſt, for an act of his, which they had ratified?

The example of *Buteo* is, in my opinion, another confirmation of the ordinary power of filling up the Senate being in the Cenſors: for the ſupply he made ſeems to be entirely *ad libitum*; and the only reaſon he gives for not turning any perſon out of the Senate is, that he does not think it fit for one man alone to judge of the character of a citizen; which was a declaration conformable to the law then in force to prevent a ſole Cenſor.

Buteo was plainly too nothing more than a Dictator with Cenſorial power: if therefore the ordinary method of the Cenſors filling up the Senate had been by aſſembling the people to chuſe the new Senators, it would have been juſt as eaſy, and more natural for *Buteo* to have been created Dictator to convene thoſe uſual aſſemblies of the people to make that choice, than to have veſted him with authority to nominate them himſelf.

The admiſſion you quote of *Attius Clauſus* the *Sabin* (afterwards called *Appius Claudius*) into the Senate, was an extraordinary act, and the conſent of the people might perhaps be neceſſary to naturalize a foreigner; eſpecially with ſo great a rank as the Senatorial dignity annexed to the naturalization: but even in his caſe *Livy* does not, as you intimate, ſay the people made him a Senator; his words are only, *Appius inter Patres lectus*, without deſcribing how, or by whom; but ſuppoſing it had been your way, I ſtill think no judgment can be formed from this uncommon caſe, on the ordinary courſe of admitting Senators at other times.

There is another circumſtance, and I think a very ſtrong one, that makes me wonder, why you chuſe to adhere to *Dionyſius*'s account of the *Tribes* and the *Curiæ* chuſing the firſt Senators: for if you give credit to that particular deſcription of *Dionyſius*, with regard to the choice of the firſt hundred Senators under *Romulus*, and imagine, that all ſubſequent promotions to the Senatorial dignity under the ſucceſſors of *Romulus* were made in the ſame way; if, I ſay, you believe this account to be true, and yet in the utmoſt ſtretch of belief in favour of the power of the people, you can only pretend,

pretend, that, after the expulſion of the Kings, the Conſuls and Cenſors prepared a liſt, and preſented it to the people for their approbation, you muſt fall into a manifeſt abſurdity: becauſe, according to this ſyſtem, the people after the eſtabliſhment of the Republic would have had a leſs ſhare in this material tranſaction of conferring the Senatorial rank, than they had during the Regal government; as they would have exchanged the ſole and abſolute power of electing Senators for a *Congé d'elire*, or at moſt, for a *negative*.

From whence I conclude, that if ever your own manner of accounting for the choice of Senators, during the Conſular government, were to be admitted, ſtill *Dionyſius*'s account of the people chuſing them, under the Kings, in the firſt inſtance, could not be true. Whereas, according to my hypotheſis, the change in the manner of ſupplying the Senate, on the change of the government from a Monarchy to a Republic, is a very natural alteration: as the creation of annual Magiſtrates by the people, and the immediate ſeat *that* creation gave thoſe Magiſtrates in the Senate, together with the claim they alſo had to be confirmed Senators, and enrolled by the Cenſors, on the expiration of their offices, did by this combination of circumſtances give

the people their proper ſhare in the choice of Senators, which, before the eſtabliſhment of the Republic, and the inſtitutions of electing annual Magiſtrates, they never had enjoyed.

I do not find in *Manutius* the diſtinction you ſpeak of, as mentioned by him, between the *ſecret Senate*, and the *general Senate*. He reconciles the ſtory of *Craſſus* and *Fabius*, as related by *Valerius Maximus*, to my ſyſtem, by ſuppoſing, that though the Curule Magiſtrates had a right, even before they were enrolled by the Cenſors, to ſit and vote in the Senate, after the expiration of their office, in the ſame manner that they did whilſt they were in office: yet that the annual Magiſtrates, who were not Curule Magiſtrates, had not this privilege, but quitted their ſeats in the Senate, unleſs enrolled by the Cenſors, with their Magiſtracy; for which reaſon *Craſſus*, who had been only Quæſtor, which was no Curule Magiſtracy, had no acceſs into the Senate, either as a Senator, or as one who had a right to vote in the Senate [a].

[a] Licuit igitur iis, qui Curulem honorem geſſiſſent, in Senatum venire, iis qui non Curulem, non licuit: atque hoc tum ea quæ diximus, tum hiſtoria de Q. Fabio Maximo, tradita declarat. *Manutius*, p. 19. and 20. of the Venetian edition.

I like

I like extremely this opinion of *Manutius:* he ſupports it by many examples, and it removes all the objections ariſing from this ſtory to the accounts of the *Roman* Senate in other authors.

When you ſay it is often natural for Hiſtorians inaccurately and curſorily to aſcribe acts to Magiſtrates, who act but miniſterially, as if they acted by themſelves, I grant it: but I cannot poſſibly allow the inſtance you give of *Livy*'s ſaying, that on the firſt eſtabliſhment of the Conſular government, the Conſuls were choſen by the *Præfect of the city*, is an example of what you aſſert; becauſe the words of *Livy*, b. i. c. 60. are theſe, *Duo conſules inde comitiis Centuriatis à Præfecto urbis, ex commentariis Servii Tullii creati ſunt.* Which words expreſsly ſhew, that the *Præfect of the city* did only aſſemble the *Centuries* to make the election. Had *Livy* deſcribed *Romulus*, *Tarquinius Priſcus*, or *Brutus*, or *Buteo*, or any Cenſor, chuſing Senators, *comitiis Centuriatis*, *aut Curiatis*, *aut Tributis*, I ſhould never have underſtood the nomination of ſuch Senators according to *Livy* to have depended on the Cenſors, any otherwiſe than miniſterially, as you expound it: but there is nothing of this kind that I know of to be found throughout all *Livy*'s Hiſtory.

The

The ſpeech of the Tribun *Canuleius*, and the paſſage in *Cicero*'s oration that makes the diſtinction between the Senators *aut ab Regibus lecti*, *aut poſt Reges exactos juſſu populi*, can in my opinion not be fairly conſtrued to extend farther than the annual Magiſtrates: for though you quote no more of *Cicero* than theſe words, *deligerentur autem in id conſilium ab univerſo populo*; yet theſe words, as I have obſerved already, evidently refer to thoſe immediately preceding, which are, *Majores noſtri ita magiſtratus annuos creaverunt, ut conſilium Senatus Reipublicæ præponerent ſempiternum*; *deligerentur autem*, &c. and how abſurd the obſervation would have been in *Cicero* to have given it as an inſtance of any power gained to the people, that after the expulſion of the Kings, his anceſtors created annual Magiſtrates in order to ſupply vacancies in the Senate, if before there were any ſuch thing as annual magiſtrates, and afterward too, every new Senator, even without the claim of a Magiſtracy, was always choſen by the people?

You yourſelf indeed, in my opinion, in a more advanced part of your Letter, fully explain (though ſpeaking on another occaſion) what *Cicero* meant, and all he meant in this paſſage: for you ſay, "the "people's power in chuſing Magiſtrates was the very

" ſame in effect with the power of chuſing Senators; " ſince thoſe Magiſtrates, by virtue of their office, had " of courſe a place in the Senate." But notwithſtanding this may ſhew, that the people, whenever they choſe a Magiſtrate, did in effect chuſe a Senator, yet it does not in the leaſt ſhew, that no man could be a Senator, who had not been a Magiſtrate; or that the authority of the people conferred this Senatorial dignity, when detached from a Magiſtracy, though it beſtowed it, as far as it was annexed to one.

There are ſome Commentators, who interpret theſe words of *Tully*, *deligerentur autem in conſilium ab univerſo populo*, thus, " that they were choſen out of the " whole body of the people;" but I think the great inaccuracy of *ab* for *ex*, in this place, ſo *unciceronian*, that I would not make uſe of an interpretation I cannot approve, as any argument againſt you.

The quotation you afterward make from *Cicero pro Cluen.* which mentions the reſtraints and checks upon the power of the Cenſors, is by no means, in my opinion, any refutation of my ſuppoſition, that the Cenſors had a power to make and unmake Senators: for the acts of all temporary powers are certainly liable to be reſcinded; as one Parliament annuls what another

Parliament

Parliament has enacted; and as the ſubſiſting Houſe of Commons certainly can, and often does, either reſtore to people a right of voting for Members of Parliament, which a former Houſe of Commons had taken away; or takes away a right, which a former Houſe of Commons has allowed. But this in nowiſe ſhews the weakneſs of the power of the Houſe of Commons, any more than the other examples do of the then Cenſors; but on the contrary, proves the abſoluteneſs of it whilſt it ſubſiſts.

The checks on the power of the Cenſors hinted at by *Cicero*, I ſuppoſe might be the reduction of their term by the *Æmilian* Law from five years to one and a half, and the ceſſation of the office of one Cenſor upon the death of the other.

And as to the caſes quoted in your Letter, where the people interpoſed and annulled the acts of the Cenſors, in their reforming capacity, on a diſpute between the Cenſors and the Dictator, and the Cenſor and the Tribuns, theſe cauſes only ſerve to prove, what I am very ready to allow, that the people of *Rome* often took into their hands the arbitration of diſputes between their great magiſtrates, even in the exerciſe of legal powers, if they did not like the uſe, that

that was made of thoſe powers. But I think thoſe examples in no manner contribute to prove that the power of making Senators reſided not in the Cenſors; or that it reſided there in a different manner from every other delegated power in the *Roman* State; where the extreme reſort, not only for appeal againſt the Cenſors, but againſt every other magiſtrate, was always confeſſedly, and often practically, in the body of the people.

The Parliament of *England* interpoſed in the ſale of my Lord *Darentwater*'s forfeited eſtate; and took upon them to determine, whether the bargain ſhould be valid or not: but it does not follow from thence, that the ordinary way of deciding diſputes about property is by Act of Parliament. Yet this inſtance is ſo far parallel to the point in diſpute between us, that it ſerves to ſhew, whereſoever the ſupreme power of any State is lodged, that any caſes may be taken arbitrarily out of the common road to be adjudged at the diſcretion of that unbounded authority. And as the body of the people of *Rome* were as undeniably the ultimate reſort in that Government, as the Parliament in ours, every thing did come within the cognizance of their authority, that they thought fit to bring there.

The Houſe of Commons does often too, by an arbitrary power they aſſume over the Seats of their own Members, refuſe to admit Repreſentatives of Counties and Boroughs, as legally choſen perhaps, as any members who ſit there; but this does not ſhew, that ſuch Boroughs and Counties have no right to chuſe Repreſentatives, any more than the people of *Rome*'s over-ruling the acts of their Magiſtrates demonſtrates, that the acts of thoſe Magiſtrates were not performed under a legal authority.

I therefore, upon the whole, look upon the power of the Body of the people, in this caſe of the Cenſors chuſing Senators, to have been no greater, than it was over the acts of every other Magiſtrate in the Commonwealth in his particular diſtrict. And after ſifting and ſcanning this ſubject, as nicely and minutely as I am able, I have not the leaſt doubt, from the genius of the *Roman* Government, the natural concluſion from collected circumſtances, the general tenor of whole hiſtories, and the explicit paſſages of particular authors, that during the Regal government, every ſupply and addition made to the Senate was purely and ſolely the act of the King. That after the expulſion of the Kings, as the power of the Conſuls was, in every particular, the ſame with the Kings, except that of being

annual and divided, inſtead of being ſingle and perpetual; ſo I am of opinion, that the admiſſion of new Senators depended as much on the Conſular power, as it had before done on the Regal: with this exception, that from the time of the creation of the annual Magiſtrates, the Conſuls were expected to make thoſe magiſtrates a part of the ſupply, as far as they would go, towards the filling up what vacancies there were.

I am full as clear too, that from the time of the *Ovinian* Tribunſhip, when the office of calling over the Senatorial roll was transferred from the Conſuls to the Cenſors, the Cenſors, by virtue of this office, and their office of reformation, which reached all ranks, orders, and degrees of citizens, were abſolute maſters of the ſeats of all Senators; that they could turn out thoſe already enrolled; or refuſe to enroll; or actually enroll whom they thought fit: and were ſubject, in the execution of this power, to no other check, reſtraint, or controul, than that to which the acts of every other magiſtrate, in his department, were equally liable: which was, on any manifeſt or pretended abuſe of their power, an appeal from the party injured or complaining, to the collective Body of the people; who were undoubtedly by Law, whilſt

the *Romans* preſerved their liberty, that which, after they loſt it, the Soldiery were by force: that is, by them all power in the State was originally delegated, and all diſputes finally adjuſted.

I do not imagine therefore that in any flagrant enormous abuſe of this power, their acts would have been acquieſced under, any more, than I think, perhaps, an *Engliſh* Houſe of Lords would acquieſce under twenty footmen being made at once Peers by the Crown; and yet nobody will ſay the power of making Peers is not in the Crown.

I am unwilling to recapitulate any thing I have ſaid in my former Letters, but I cannot help adding, that *Auguſtus* taking the title of Cenſor, as *Suetonius* and *Dion Caſſius* both tell us he did, on purpoſe to warrant his new-modelling the Senate both by purgations and admiſſions; and *Claudius*'s doing the ſame, are to me demonſtrations, that I have not overrated, by my ſyſtem and conjecture, the power that the Cenſors had over the Senate.

Manutius, whoſe authority you ſeem, and not I think unjuſtly, to have in great eſteem, imagined it ſo plain from all Hiſtories, that the Cenſors on their laſt acceſſion of power in the *Ovinian* Tribunſhip, choſe the

the Senators, that he ſays, in his firſt Chapter on the *Roman* Senate, p. 8, it is needleſs to bring particular authorities to prove what is ſo generally known [b].

You indeed expound the *Ovinian* Law very differently, when you ſay it commanded the Cenſors to chuſe, for Senators, the beſt men of every order "with "the conſent of the people in their *Curiæ*." But the word *Curiatim* in *Feſtus*, in voce *Præteriti*, which you alledge for your authority in this caſe, is quite otherwiſe explained by *Manutius*, who mentioning this paſſage in *Feſtus*, after the word, *Curiatim*, ſays, *hoc eſt, ex omni ordine, Plebeio, Equeſtri, Senatorio* (I think he ſhould have ſaid *Patricio* inſtead of *Senatorio)*, *optimum quemque in Senatum legerent*. Manutius, p. 21.

Before I conclude, I muſt mention a paſſage in *Tully*, I have lately found, which, I think, demonſtrates plainer, than any thing I have yet quoted from him, how abſolute the power of the Cenſors was in making or unmaking a Senator. The paſſage is this, in his Oration *pro Domo ſuâ ad Pontifices*:—*L. Cotta, homo cenſorius, in Senatu juratus dixit, ſe, ſi Cenſor tum eſſet, cum ego aberam, meo loco Senatorem recitaturum*

[b] Cenſorum deinde poteſtas fuit in legendo Senatu, quod auctoritate veterum confirmare puto eſſe ſupervacaneum. *Manutius*, c. i. p. 8.

† *fuiſſe*.

fuiſſe. And immediately preceding this paſſage, *Tully* ſays,—*L. Philippus Cenſor avunculum ſuum præteriit in recitando Senatu; nihil enim poterat dicere, quare rata non eſſent, quæ erant acta in eâ republicâ, in quâ ſe, illis ipſis temporibus Cenſorem eſſe voluiſſet.* Which paſſage, I think, fully proves, that even according to *Tully*, the Cenſor's omitting any name in calling over the Senatorial roll did of courſe, without any thing more, exclude that man the Senate: ſince it is very plain by this paſſage, that *L. Philippus* did exclude his uncle the Senate without giving any reaſon why: and as *Tully* ſuggeſts, without having any reaſon to give.

I will make no apology to you for the length of this reply, nor for that of my former Diſſertations, but on the contrary will own to you, that notwithſtanding the dryneſs of the original point in view, as various other ſubjects, in the purſuit of that point, have, through the courſe of my reading, incidentally occurred, and ſeveral circumſtances of ancient Hiſtory been caſually drawn into the *vortex* of this Inquiry (if I may be allowed that expreſſion); ſo I flatter myſelf, that you may read theſe papers, in ſome degree, with the ſame amuſement, that I write them; that what has hindered

dered them from being tedious to me in the collection, may make them not wholly unentertaining to you in the peruſal; and that the ſame circumſtances, that have enlivened the progreſs of this ſearch to me, may recommend the fruits of it to you. Poſſibly my vanity may carry me ſtill farther (it is a leader that ſeldom ſtops ſhort); it may make me hope, that all I have written will not be altogether unuſeful neither: for though it will tell you nothing you had not been informed of before, yet it may bring things again into your remembrance, which you will not be ſorry to retain there, and which would otherwiſe perhaps have eſcaped it. And if after all the proofs I have laboured to bring, in ſupport of my own ſentiments, I ſhall happen, like many writers and ſpeakers, though thoroughly convinced myſelf, to have convinced only myſelf, I muſt make my apology in the words of a very learned author, and only add, *Nihil habeo quod in tantâ Auctorum diverſitate dicere poſſim, niſi inter Romanæ Hiſtoriæ ſcriptores veteres, unde hæc deſumpſi, non bene conveniſſe in hac re, ut in multis aliis dicamus*[c].

I am, &c.

[c] *Nicol. Gracchii, de comitiis Romanorum*, l. i.

LETTER XIV.

Dr. Middleton to Lord Hervey.

LETTER XIV.

Dr. Middleton to Lord Hervey.

MY LORD, *Cambridge, Aug.* 31, 1735.

I HAD the honor of what your Lordſhip calls your *final anſwer*; and though that ſtile be the moſt mortifying to an Antagoniſt, yet I muſt allow it to be juſt; ſince I have nothing either from my books or invention to provoke a further reply.

Your Lordſhip has confirmed your general argument by ſtrong and clear teſtimonies, urged with great ſpirit, and illuſtrated by many ingenious obſervations on the Conſtitution of the *Roman* government: and if what I have offered could prevail only for ſome abatement of

that high notion of the *Cenſorian* power, by which your Lordſhip declares them, "the maſters of the "ſeats of all Senators, to put in or turn out at plea-"ſure;" it would not perhaps be difficult to bring our opinions to ſome agreement.

I ſhall readily grant on my ſide, that the Cenſors had the proper and ſole juriſdiction of enrolling all Senators in the ordinary way; and of degrading them likewiſe, without any conſent of the people: but this power of enrolling was but miniſterial; and the other of degrading ſo far from being abſolute, that it was neceſſarily grounded on the charge of ſome crime, and always reverſible: it was not a power to turn out at diſcretion; but to puniſh for vices; and reached no further, than to a ſuſpenſion from office.

The chief difficulty is to ſettle the extraordinary method of ſupplying the Senate, when the number of vacancies exceeded the ordinary ſupply of the magiſtrates: and though theſe occaſions muſt have been frequent; yet the negligence of writers has not left us light enough to determine, where that power was lodged. I never thought, that the people were called to vote for the nomination of any ſingle Senator, or any number of them in the firſt inſtance; but

but that the Cenſors, if in office, or ſome other magiſtrate, in their place, was appointed to prepare a liſt, of the moſt capable, and beſt qualified by law or cuſtom; and that the conſent and approbation of the people was then required to give it a ſanction. For, from the inſtances referred to, in the courſe of this inquiry, we ſee, that the ſettlement of the roll was made, *in concione*, or an aſſembly of the people; which would have been done rather at home, if the will of the magiſtrate had been the only rule in the caſe.

In my notion of the people's power under the Kings, I follow *Dionyſius*, preferably to the *Roman* hiſtorians, becauſe he had traced the origin of their antiquities with greater diligence and accuracy, and is univerſally held to be more authentic, than them all: and alſo, becauſe in confirmation of his teſtimony, we have an unconteſted proof of the people's equal and ſimilar power, in the other moſt important branches of Government.

As to the teſtimony of *Cicero*, I grant it to be of the greateſt weight in all caſes, where he can be a competent witneſs: and where he ſays therefore, "that the Kings made the Senators, and after them,

"the

" the people:" I take the latter part of his aſſertion, becauſe he could not be miſtaken in it; and reject the former, becauſe it was not ſpoken from his own knowledge; but, as I imagine, from the vulgar tradition, and prejudice of the place, where the name of King implied every thing that was arbitrary.

Your Lordſhip ſeems to conſider the Senate, as the King's council: but though it may ſometimes be called ſo improperly; yet it is certain, that it was always eſteemed as the public council of the Commonwealth; and as the guardian of its liberties, in which the whole people had an intereſt.

The diſtinction of the *ſecret* and *general* Senate was ſuggeſted to me by *Manutius*, though, for the omiſſion of marking the place, I cannot at preſent recur to it: but his other diſtinction of the *Curule* magiſtracies will not hold good: for it may be ſhewn by undeniable facts, that the inferior offices, and particularly that of Quæſtor, gave the ſame right to a perpetual ſeat in the Senate.

Upon the whole, there is, as your Lordſhip intimates, ſo much obſcurity in every part of the queſtion, and ſuch ſeeming inconſiſtency in the facts and caſes of it, incidentally mentioned in Hiſtory; that it is

very difficult to reduce them to any uniform ſyſtem. The great perplexity of the ſubject, that all inquirers complain of, is a manifeſt proof of the negligence of the *Latin* writers: and the complaint would probably have been removed, if the books of *Dionyſius* had remained to us compleat: whoſe Hiſtory now ends unfortunately, where the ſtreſs of this inquiry begins, with the creation of the Cenſors.

Though a natural fondneſs for one's own opinion may incline me to think it more probable, and better grounded, than others will allow; yet as it is drawn from an accumulative evidence of circumſtances and teſtimonies, not very clear, I can readily ſee, that your Lordſhip's hypotheſis has the advantage, and will be thought the more ſolid or plauſible by the generality of readers. But however I may fall ſhort in the point of convincing, I have had my full ſhare of the entertainment, that your Lordſhip mentions to have received from this revival of the old flame, and the ſporting again, as it were, with our youthful ſtudies. I never recur to theſe without a freſh pleaſure; and have never found ſo much, as when in partnerſhip with your Lordſhip; who has the art of throwing a ſubject into every light, where it can be viewed

to

to any advantage; and of extracting, whatever it can poſſibly yield either to our pleaſure or our profit.

I am, &c.

LETTER XV.

Lord Hervey to Dr. Middleton.

LETTER XV.

Lord Hervey to Dr. Middleton.

DEAR SIR,

AS the chief, if not the only objection you have remaining to my Syſtem ſeems to be, the great power I ſuppoſe to have been in the Cenſors, and that the ground I ſtand upon in that article appears to me as firm, as ancient record and claſſical authority can make it; ſo notwithſtanding the promiſe I made, of giving you no farther trouble on this ſubject, I cannot help adding one example more, hitherto unquoted and of indiſputable authority, to ſhew that this *power*, enormous as you may hold it, and unreaſonably as you

may think I have rated it, did certainly exiſt in the office of the Cenſorſhip.

Dion Caſſius, in the thirty-eighth book of his Hiſtory, tells us, that when it was the intereſt of *Cæſar* to let riot, licence, and a general diſſolution of manners prevail unchecked in *Rome*, a Law was paſſed by the people, who were always in his party, upon the pretence of abridging arbitrary power, to prohibit the Cenſors from turning any man out of the Senate, or his Magiſtracy; or from degrading, or marking any one with notes of infamy, without a previous accuſation ſpecifying his crime, followed by a formal proſecution and conviction.

This law is mentioned by *Lipſius*, *Sigonius*, and all the other writers on the *Roman* Laws, and is called the *Clodian* Law, from being propoſed and enacted by the famous *P. Clodius*, *Cicero*'s antagoniſt, and then Tribun of the people.

It may at firſt ſeem odd, to cite a Law, that ſays the Cenſors ſhall *not* have the power I have allotted to them, by way of proof to demonſtrate that they had it; but I deſire you to ſuſpend that objection to my quotation, till you ſee the uſe I would make of it.

Dion Caſſius, in his fortieth book, tells us, that this Law to leſſen the power of the Cenſors was abrogated by

by *Æmilius Scipio*, about ten years after it was made: and this repeal of the *Clodian* Law is alſo mentioned by every author, who records its promulgation. The farther account given by *Dion Caſſius* on this occaſion is, that during the time the Cenſors had their power thus abridged by the *Clodian* Law, ſo many men of mean birth, bad characters, and worſe morals, had crept into the Senatorial and Equeſtrian order, and that this claſs of intruders was ſo numerous, and their party ſo ſtrong, that no man of prudence, rank, dignity, and credit in *Rome*, would accept of the office of the Cenſorſhip, even after its ancient authority was reſtored to it; becauſe ſuch men ſaw, they muſt either irritate a great number of people, by purging theſe orders of the corrupted members, that had polluted them; or that they muſt ſuffer ſuch perſons to remain there, to the great indignity both of the magiſtrate, who permitted it, and the ſtate, which they depreciated: conſequently, the firſt Cenſors, after their former power was reveſted in them, would find themſelves under the diſagreeable dilemma of either not exerting their authority with credit, or of not being able to diſcharge their Cenſorial duty with ſafety.

However *Dion Caſſius*, towards the end of his fortieth book, lets us know, that in a year or two afterward,

terward, when *Appius Claudius*, and *Piſo* the father-in-law of *Cæſar*, were Cenſors, the Cenſorial power was again exerciſed with ſo much vigour and ſpirit, that great numbers of profligate men, by the force of it, were expelled from the Senate, and among the reſt *Salluſt* the Hiſtorian, *Curio* himſelf narrowly eſcaping the ſame fate.

Without troubling you with farther remarks or inferences from theſe paſſages and theſe Laws, I think it is very evident from hence, as well as all the other authorities in my former Letters, that the Cenſors had the power I ſuppoſe, till the time of the *Clodian* Law; that it was reſtored to them by *Scipio*'s Law; and conſequently, that it was only during the ſhort interval between thoſe two Laws, that the Cenſorſhip was ever without that authority, which I contend to have been annexed to it.

I will make you no more promiſes to leave you in quiet upon this Chapter, for fear you ſhould look upon ſuch promiſes only as a prelude to the breach of them.

Adieu.

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FINIS.

ERRATA.

Page	28.	*line* 12, *note, for* annos *read* annus.
	Ib.	14, *note, for* mentis *read* mentio.
	33.	6, *after* were *inſert a comma.*
	38.	*ult. for* reaſon *read* reaſons.
	41.	11, *for* conſulſhip *read* cenſorſhip.
	43.	6, *after* that *inſert* all.
	47.	6, *note, for* admodum *read* ad modum.
	50.	*penult. for* failloit *read* falloit.
	51.	6, *note, for* corrumperat *read* corruperat.
	52.	*antepenult. note, for* arbitrata *read* arbitratu.
	70.	14, *for* tot his *read* to this.
	83.	*ult. note, for* fierat, *read* fierent.
	87.	5, *note, for* Gracchii, *read* Grucchii.
	141.	11, *for* natural, *read* nature.
	Ib.	14, *for* when, *read* whom.
	142.	*ult. note, for* injuſta, *read* injuſſu.

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